No. 82574-2

THE SUPREME COURT
OF THE STATE OF WASHINGTON

LITTLE MOUNTAIN ESTATES MHC LLC, et al.,
Petitioners,

v.

LITTLE MOUNTAIN ESTATES TENANTS ASSOCIATION, et al.,
Respondents

SUPPLEMENTAL BRIEF OF RESPONDENTS

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INTRODUCTION

This case will define the right of tenants to assign their leases under the Manufactured/ Mobile Home Landlord Tenant Act, RCW 59.20.073. It will also answer whether landlords may require tenants to sign leases that waive the Act's statutory rights. Under the Act, "any rental agreement shall be assignable by the tenant to any person to whom he or she sells or transfers title to the mobile home, manufactured home, or park model." RCW 59.20.073. The Act prohibits landlords from requiring tenants to sign leases that waive their statutory rights or remedies.

> Any rental agreement executed between the landlord and tenant shall not contain any provision:
>
> ...(d) By which the tenant agrees to waive or forgo rights or remedies under this chapter;

RCW 59.20.060(2)(d) (statutes attached as Appendix A).

What restrictions does this section place on tenants waiving or forgoing their right to assign the full terms of their leases? There are at least three answers to this question. First, petitioners Little Mountain Estates MHC LLC and Peregrine Holdings (the Landlords) suggest tenants have no protection beyond the normal rules of contract. As long as tenants can assign some portion of their leases, the Act is satisfied. The trial judge adopted this

answer. Second, the language of the Act suggests that tenants have a non-waivable right to assign. Once a tenant signs a lease for a fixed term, the Act forbids landlord and tenant from reducing the term of the lease on assignment. Third, a Court of Appeals' decision on a different section of the Act suggests that tenants can forgo statutory rights if they sign a written waiver separate from the lease. Holiday Resort Community Ass'n v. Echo Lake Associates, LLC, 134 Wn. App. 210, 135 P.3d 499 (2006). The Court of Appeals in this case adopted the third answer.

Respondents Little Mountain Estates Tenants Association, Jerry Jewett, Virginia Haldeman, Marie McCutchin, and Wes Walton ("the Tenants") represent the residents of Little Mountain Estates mobile home park in Mount Vernon, Washington. They respectfully request this Court to rule that the first answer is unlawful under the Landlord Tenant Act. Landlords cannot require tenants to waive their assignment rights in a lease. The Tenants ask the Court to affirm the Court of Appeals, and to remand the case for trial on the Tenants' Consumer Protection Act claim. As the Court of Appeals ruled, "because there is no dispute that the lease agreement required the tenants to give up their right to assign the remainder of their 25-year lease, the provision is an

unenforceable waiver of the tenants' rights under the MHLTA." Little Mountain Estates Tenants Ass'n v. Little Mountain Estates MHC LLC, 146 Wn. App. 546, 561, 192 P.3d 378 (2008) (Attached as Appendix B).

I. WHAT THIS BRIEF COVERS

The Tenants' supplemental brief discusses the two legal issues raised by the Landlord's petition for review: (1) may a landlord require tenants to forfeit their full assignment rights; and (2) if so, must the waiver be in a separate document? The brief's focus is the legal scope and enforcement of a tenant's statutory right to assign. The supplemental brief does not repeat the statement of facts provided in earlier briefs. The Court of Appeals' decision summarizes the facts in this case, and the Tenants' opening brief, reply brief and answer to petition for review contain more detailed statements of fact.

This supplemental brief also does not dispute the Court of Appeals' decision to uphold the rent adjustment clause in the lease. Little Mountain Estates Tenants Ass'n v. Little Mountain Estates MHC LLC 146 Wn. App. 546, 561, 192 P.3d 378 (2008). The trial court altered the clause, Attachment A to the Lease, concluding "the Consumer Price Index formula calculation of rent contained in

Attachment A of the Lease does not make sense." (Findings of Fact ¶ 23; CP 3103). Although the Tenants disagreed with the changes, they are less damaging than the assignment forfeiture clause.

Finally, the supplemental brief does not reargue the Tenants' request for an award of reasonable attorneys' fees. In their briefs to the Court of Appeals and their answer to the petition for review, the Tenants provide the legal authority under RAP 18.1 for an award.

II. LITTLE MOUNTAIN'S ASSIGNMENT FORFEITURE CLAUSE VIOLATES THE LANDLORD TENANT ACT AND IS UNENFORCEABLE

This lawsuit arose when Little Mountain Estates' Landlords tried to enforce the following clause in the Tenants' 25-year leases.

> This lease shall be assignable by tenant only to the person to whom Tenant sells or transfers title to the manufactured home on said lot subject to the following:
>
> ...(c) Upon assignment by Tenant of Tenant's leasehold interest in the homesite, this rental agreement shall *automatically convert to a one (1) year lease beginning on the effective date of the assignment.* The new monthly rent shall be the rent charged by landlord following the most recent rent increase for the park preceding the effective date of the assignment.

(CP 516) (emphasis added) (Lease attached as Appendix C). This clause required Tenants to forfeit all but one year of the remaining

term of their leases when they sold their mobile homes to a new owner.

As the Court of Appeals ruled, the assignment forfeiture clause violated the Landlord Tenant Act for three reasons. First, the Legislature in RCW 59.20.073 granted tenants the right to assign the full remaining term of their leases, subject to the landlord's approval of the assignee. Second, RCW 59.20.060(d) barred Little Mountain's owners from requiring tenants "to waive or forgo rights or remedies under this chapter" with the assignment forfeiture clause in their leases. Third, because the assignment forfeiture clause conflicts with the Landlord Tenant Act, it is unenforceable. RCW 59.20.040.

A. The Right To Assign Under RCW 59.20.073 Encompasses The Full Remaining Term Of The Leases

The right to assign under RCW 59.20.073 includes the entire remaining term of the lease. As the Court of Appeals concluded,

> the MHLTA does not define "assignment." But the general rule under common law with respect to the assignment of contract rights is that such rights may be freely assigned unless prohibited by statute. An assignee of a contract steps into the shoes of the assignor and has all the rights of the assignor, including all applicable statutory rights. Because RCW 59.20.073(1) states that "any rental agreement shall be assignable," and the rental agreements here

> were for 25-year leases, we conclude that the unambiguous language of RCW 59.20.073(1) supports the conclusion that the tenants had the right to assign the remaining term of the 25-year lease.

Little Mountain Estates Tenants Ass'n v. Little Mountain Estates MHC LLC, 146 Wn. App. 546, 560, 192 P.3d 378, 384 (2008) (citations and quotations omitted).

This mirrors the general rule for assignment of any leased property.

> With an assignment, the tenant's assignee acquires the full balance of the tenant's leasehold estate and comes into privity with the landlord. Expressed technically, the assignee is "substituted" as holder of the *leasehold estate*.

17 Washington Practice § 6.65 (2nd Ed.) "A transfer of a lessee's entire interest in the premises for the balance of the term, leaving no reversionary interest in the lessee, constitutes an assignment and not a sublease." State v. Meador, 60 Wn.2d 543, 544-545, 374 P.2d 546 (1962). Washington law defines assignment as a transfer of the entire remaining term of the lease, not some portion of it.

The Act's language confirms the scope of the Tenant's right. Under RCW 59.20.073, the Tenants have the right to assign "the rental agreement". This encompasses the entire agreement, not simply a subset of the lease or some parts of it. Given the

traditional meaning of assignment, coupled with the legislative language, the most reasonable reading of RCW 59.20.073 grants the Tenants the right to assign their entire leases to those who purchase their mobile homes.

This is where the trial court erred on summary judgment. Rather than defining the statutory right of assignment to include the full remaining term, the court adopted the Landlords' argument that assignment of only a portion of the remaining term suffices. (6/14/05 Order; CP 379). "As long as the lease is assignable, and the length of the new term is, as here, at least one year, the assignment clause does not violate the MHLTA." (Petition for Review at 15). According to the Landlords, the length of assigned lease is purely a matter of contract.

The Landlords' argument prevailed by minimizing the statutory right of assignment. If assignment protects only a year of the remaining years in a 25-year lease, the Landlords could require Tenants to waive the remainder. But this is not what the Legislature intended. The Landlord Tenant Act confers a stronger, more valuable statutory right – to keep a mobile home in place for the entire term of the lease. Why? Because a used mobile home

without a leased pad is worth little. The fixed location of a mobile home, rather than the structure itself, creates its value.

> [T]he combination of short leases, entrance fees, and prohibitions of on-the-lot sales have allowed some park owners to make substantial profits by evicting home owners and their homes. Because of the space shortage, many evicted mobile home owners have lost their investments. Park owners have not allowed the homes to be sold on their land, and there are few, if any, other places to put them. Consequently, *the evicted homes are worth much less when offered for sale.*

Manufactured Housing Communities of Washington v. State, 142 Wn.2d 347, 395, 13 P.3d 183 (2000) (Talmadge, J., dissenting) (emphasis added). In other words, "mobile homes are not mobile." Manufactured Housing, 142 Wn.2d at 393. (Talmadge, J., dissenting). The Legislature found that "many homeowners who reside in mobile home parks are also those residents most in need of reasonable security in the siting of their manufactured homes." Former RCW 59.23.005 (1994).

Protecting tenants' right to assign the full term of their leases reinforces the purpose of the Landlord Tenant Act. The Legislature adopted regulatory protection for tenants for at least two reasons.

> First, as compared to traditional private residences, mobile homes are owned in disproportionately high numbers by low income and elderly citizens. To the extent these citizens have less power and fewer

> options available to them, they are viewed as warranting special protection. Second, mobile homes often represent a sizable investment on the part of the owner. Difficulties associated with a mobile home lot can at least cause the owner to incur the substantial expense and inconvenience of moving, and at the worst can lead to the loss of the mobile home resulting in severe economic hardship or homelessness.

Washington Real Property Deskbook § 15.3, pp. 15-19 (3rd Ed.) 1997.

Because a long-term lease preserves a tenant's investment, the right to assignment means more than the ability to transfer some smaller portion of a lease. It means the right to assign the entire remaining term. Under the Act, assignment encompasses the full term of the lease, not just a year.

B. Reducing The Term Of An Assigned Lease Forfeits The Right

Little Mountain Estates' owners candidly explained why they included the assignment forfeiture clause in the lease. They never intended the Tenants to use the full 25 years.

> One of the owners of LME, Paul Ware, testified that the 25-year lease was a means to attract tenants, but because the average age of the tenants who moved into LME was 70, LME anticipated that most of the tenants would only actually live at the mobile home park for approximately five years.

Little Mountain Estates, 146 Wn. App. at 554. The purpose of the assignment forfeiture clause was to convert a 25-year lease into a one year term as soon as possible. Little Mountain Estates, 146 Wn. App. at 554. ("according to Ware, the reason for the unadvertised assignment conversion clause in Attachment B was to maximize the owners' profits when the tenants sold their homes").

No dispute should exist that assigning a one-year lease is less valuable than assigning the remaining 20 years on a 25-year lease. The assignment forfeiture clause required Tenants to give up the majority of their lease term on assignment. As noted above, because mobile homes are in fact immobile, the length of the lease directly affects the value of Tenants' mobile homes and improvements to their leased lots.

> Physically moving a double- or triple-wide mobile home involves "unsealing; unroofing the roofed-over seams; mechanically separating the sections; disconnecting plumbing and other utilities; removing carports, porches, and similar fixtures; and lifting the home off its foundation or supports." Colton & Sheehan, supra, 232. Costs of relocation, assuming relocation is even possible for older units, can range as high as $10,000. Id. It is the immobility of mobile homes that "accounts for most of the problems and abuses endured by mobile home tenants." Luther Zeigler, Statutory Protections for Mobile Home Park Tenants--The New York Model, 14 REAL ESTATE L.J. 77, 78 (1985).

Manufactured Housing, 142 Wn.2d at 393 (Talmadge, J., dissenting). A prospective buyer will pay more for a mobile home with a 20-year lease term than for the same home with a one-year term. The uncertainty of a short-term lease on assignment directly reduces the value of the Tenants' homes.

The assignment forfeiture clause required the Tenants to cede a substantial portion of their investment when they moved. This is exactly what the Legislature forbade in RCW 59.20.060(2)(d). By signing the lease, Tenants waived their assignment rights under the Act.

C. The Assignment Forfeiture Clause Violates RCW 59.20.060

Because it requires Tenants to waive or forgo their full rights of assignment, the assignment forfeiture clause violates RCW 59.20.060(2)(d) (lease may not require tenant "to waive or forgo rights or remedies under this chapter"). The Landlord Tenant Act displaced the common law of contracts, forbidding landlords from requiring tenants to waive statutory rights in a mobile home lease. "Under the MHLTA, rental agreements cannot contain any provision waiving a tenant's statutory rights." Holiday Resort Community Ass'n v. Echo Lake Associates, LLC, 134 Wn. App. 210, 223, 135

P.3d 499 (2006). By reducing a 25-year term to one year on assignment, the Landlords' lease required the Tenants to forgo their statutory right of assignment.

None of the Landlords' justifications for the forfeiture clause resolves this conflict. First, the Landlords argue that under RCW 59.20.090(1), tenants may agree to any lease term.

> Unless otherwise agreed rental agreements shall be for a term of one year. Any rental agreement of whatever duration shall be automatically renewed for the term of the original rental agreement, unless a different specified term is agreed upon."

RCW 59.20.090 (1). This applies to the *formation* of the lease, not assignment after the lease is in effect. Little Mountains' Landlords and Tenants could agree to any lease term up front, including 25 years. But once signed, the lease is valid for the full term, and the tenant may assign the full lease to an acceptable buyer. The Act does not permit landlords to penalize tenants on assignment by reducing the remaining term of the lease.

Second, contrary to the Landlords' assertion, the Act forbids the assignment forfeiture clause. The Landlords argue

> no provision of the Act prohibits landlords and tenants from negotiating mutually beneficial provisions not covered by the Act. Specifically, nothing in the MHLTA expressly prohibits parties from modifying the lease term upon assignment.

(Petition for Review at 10). The flaw in this argument is that it defines assignment as requiring only a one-year term, not the remaining term on the lease. If the argument was correct, the Landlord could have required Tenants to waive all provisions of their leases until they had nothing left to assign. That is also modifying the lease term upon assignment, yet the Act must protect something from waiver. The Legislature granted tenants the right to assign the "rental agreement" -- the entire agreement, not some watered down version that is materially different from the original lease.

The Landlords' desire for a specific prohibition of the forfeiture clause is unrealistic. The Act prohibits the assignment forfeiture clause as an example of a lease term that requires tenants to waive their statutory rights. Statutes rarely catalogue the specific contract terms that are forbidden. Instead, the Legislature, like here, broadly invalidates any lease term that would require tenants to waive the rights the statute grants.

Third, the Landlords argue that an opinion from the California Court of Appeals justifies the Landlords' forfeiture clause. Vance v. Villa Park Mobilehome Estates, 36 Cal.App.4th 698, 42

Cal.Rptr.2d 723 (1995) (Attached as Appendix D). The case is distinguishable on multiple grounds. Unlike Washington's law, California's Mobilehome Residency Law does not contain a statutory right of assignment. See California Civil Code §§ 798.15-798.22. It instead forbids a landlord from charging fees on the sale or transfer of a mobile home. California Civil Code § 798.72.

The Vance decision does not discuss assignment. It addresses whether a 10 percent increase in rent on transfer of a mobile home is an illegal transfer fee.

> The transfer and selling fees prohibited by section 798.72 are simply a charge imposed without any consideration and bear no relationship to the homeowner's right of use and possession. Nothing in the background of section 798.72 as described in People v. Mel Mack Co., supra, 53 Cal.App.3d at page 626, 126 Cal.Rptr. 505, indicates a legislative concern with the rent to be charged the new tenant for the use and occupation of the premises. (Cf. Dills v. Redwoods Associates, Ltd., supra, 28 Cal.App.4th at p. 893, 33 Cal.Rptr.2d 838 [nothing in background of prohibition of certain fees in §§ 798.31 to 798.36 indicated intent to regulate recovery of capital improvement expenses by increased rent].)

Vance, 36 Cal.App.4th at 707-708, 42 Cal.Rptr.2d at 728 (1995).

In contrast, the Washington Legislature expressly protected the right of tenants to assign their leases and forbade landlords

from requiring tenants to waive or forgo these rights. The California opinion has no relevance to the legal question before this Court.

Fourth, the Landlords suggest that the Court of Appeals' decisions in Holiday Resort and this case upset "the sensible balance between important protections for tenants of manufactured mobile home parks, and the economic realities of trying to keep such parks in business." (Petition for Review at 6). The opposite is true. The Landlord Tenant Act struck a new balance between landlord and tenants, providing tenants powerful statutory rights. In both cases, landlords used leases to whittle away these rights. The Court of Appeals' decisions prohibited landlords from undermining the balance established by the Legislature.

In sum, the assignment forfeiture clause is a specific example of a lease term requiring tenants to "waive or forgo the rights and remedies" in the Landlord Tenant Act. RCW 59.20.060(2)(d). The clause violates the Act, and nothing the Landlord argues excuses this violation.

D. The Assignment Forfeiture Clause is Unenforceable

The Legislature gave express direction on the appropriate remedy for this case. "All such rental agreements shall be unenforceable to the extent of any conflict with any provision of this

chapter." RCW 59.20.040. After ruling that the assignment forfeiture clause conflicts with the Act's section prohibiting waiver, this Court may appropriately strike the clause from the lease. All other provisions remain the same.

The Landlord's assignment forfeiture clause is a clever way to get around the Tenants' right to assign their leases. As the Landlords acknowledge, the forfeiture clause transforms a 25-year lease for *any* approved tenant into a 25-year lease solely for the original tenant. "In other words, this excellent deal was for original tenants only, in exchange for an agreement that the special lease terms would apply only to them." (Petition for Review at 3). A 25-year lease, which a 70-year old tenant alone could use, is an illusion.

III. MAY TENANTS WAIVE THE ACT'S STATUTORY RIGHTS?

To affirm the Court of Appeals, this Court need only conclude that assignment forfeiture clause violates the Act. But this case raises a larger question: does the Act allow tenants to waive statutory rights, and if so, under what circumstances? The Tenants ask this Court to rule the right to assignment cannot be waived.

The Court of Appeals suggested that tenants may waive their statutory rights, but only in a written document separate from the lease.

> Washington courts review waiver clauses strictly and enforce them only if their language is sufficiently clear. Chauvlier v. Booth Creek Ski Holdings, Inc., 109 Wn. App. 334, 339-40, 35 P.3d 383 (2001). And any agreement to waive a right under the MHLTA must be in a writing that is separate from the lease agreement. Holiday Resort Cmty. Ass'n v. Echo Lake Assoc., LLC, 134 Wn. App. 210, 225, 135 P.3d 499 (2006) rev. denied, 160 Wn.2d 1019, 163 P.3d 793 (2007).

Little Mountain Estates, 146 Wn. App. at 560-561.

The Tenants ask this Court not to extend the Holiday Resort conclusion to this case. The statutory right at issue in Holiday Resort – the right to renew a one year lease – has a statutory process for waiver. Under RCW 59.20.050(1),

> ...anyone who desires to occupy a mobile home lot for other than a term of one year or more may have the option to be on a month-to-month basis but must waive, in writing, the right to such one year or more term: PROVIDED, That annually, at any anniversary date of the tenancy the tenant may require that the landlord provide a written rental agreement for a term of one year.

RCW 59.20.050(1).

The Court of Appeals in Holiday Resort ruled that a landlord cannot require tenants *in the lease* to waive the one year renewal.

> RCW 59.20.050(1) requires a tenant to waive the right to the one-year rental term in writing. RCW 59.20.060(2)(d) does not allow a tenant to waive rights under the MHLTA in a rental agreement. Reading the requirements of RCW 59.20.050(1) and RCW 59.20.060(2)(d) together with RCW 59.20.090(1), we conclude that any agreement under RCW 59.20.090(1) to a rental term other than one year or any agreement to waive the right to renew must also be in writing separate from the rental agreement.

Holiday Resort Community Ass'n v. Echo Lake Associates, LLC, 134 Wn. App. 210, 225, 135 P.3d 499 (2006).

Unlike the right to renewal in RCW 59.20.050, the right to assign under RCW 59.20.073 has no waiver clause. The Legislature granted this right without qualification. Once a park owner offers a lease, and the tenant accepts, the landlord must honor the lease unless grounds for termination exist under RCW 59.20.080. Landlords may not require tenants to waive assignment rights. That is the clear mandate of RCW 59.20.060(2)(d).

Little Mountain Estates' Landlords may argue that park owners will not offer long-term leases if they cannot reduce the lease term on assignment. But properly drafted, a long-term lease benefits both landlord and tenant by eliminating turnover in a park and eliminating the economic uncertainty that short-term leases create. What will go away is the marketing technique the Landlords

used here – offering 25-year leases to elderly tenants with an undisclosed clause that forfeits the lease term on assignment. The appropriate balance for park owners and tenants is economic security, with both parties knowing exactly what will happen during the full term of the lease.

CONCLUSION

The Manufactured/Mobile Home Landlord Tenant Act replaced the common law rules of contract to protect tenants from overreaching landlords. Because tenants are uniquely dependent on landlords to provide stable, secure sites for mobile homes, the Washington Legislature granted tenants a non-waivable right to assign their lease to a qualified purchaser. Respondents Little Mountain Estates' Tenants respectfully request this Court to affirm the Court of Appeals, award reasonable attorneys' fees on appeal, and remand this case for retrial on the Tenants' Consumer Protection Act claims.

DATED this 31ST day of July, 2009.

BURI FUNSTON MUMFORD, PLLC

By _____
Philip J. Buri, WSBA #17637

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on the date stated below, I mailed or caused delivery of the Supplemental Brief of Respondents to:

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Heidi Main

ORIGINAL

APPENDIX A

RCW 59.20.050
Written rental agreement for term of one year or more required — Waiver — Exceptions — Application of section.

(1) No landlord may offer a mobile home lot for rent to anyone without offering a written rental agreement for a term of one year or more. No landlord may offer to anyone any rental agreement for a term of one year or more for which the monthly rental is greater, or the terms of payment or other material conditions more burdensome to the tenant, than any month-to-month rental agreement also offered to such tenant or prospective tenant. Anyone who desires to occupy a mobile home lot for other than a term of one year or more may have the option to be on a month-to-month basis but must waive, in writing, the right to such one year or more term: PROVIDED, That annually, at any anniversary date of the tenancy the tenant may require that the landlord provide a written rental agreement for a term of one year. No landlord shall allow a mobile home, manufactured home, or park model to be moved into a mobile home park in this state until a written rental agreement has been signed by and is in the possession of the parties: PROVIDED, That if the landlord allows the tenant to move a mobile home, manufactured home, or park model into a mobile home park without obtaining a written rental agreement for a term of one year or more, or a written waiver of the right to a one-year term or more, the term of the tenancy shall be deemed to be for one year from the date of occupancy of the mobile home lot;

(2) The requirements of subsection (1) of this section shall not apply if:

(a) The mobile home park or part thereof has been acquired or is under imminent threat of condemnation for a public works project, or

(b) An employer-employee relationship exists between a landlord and tenant;

(3) The provisions of this section shall apply to any tenancy upon expiration of the term of any oral or written rental agreement governing such tenancy.

[1999 c 359 § 4; 1981 c 304 § 37; 1980 c 152 § 4; 1979 ex.s. c 186 § 3; 1977 ex.s. c 279 § 5.]

Notes:

Severability -- 1981 c 304: See note following RCW 26.16.030.

Severability -- 1979 ex.s. c 186: See note following RCW 59.20.030.

RCW 59.20.060
Rental agreements — Required contents — Prohibited provisions.

(1) Any mobile home space tenancy regardless of the term, shall be based upon a written rental agreement, signed by the parties, which shall contain:

(a) The terms for the payment of rent, including time and place, and any additional charges to be paid by the tenant. Additional charges that occur less frequently than monthly shall be itemized in a billing to the tenant;

(b) Reasonable rules for guest parking which shall be clearly stated;

(c) The rules and regulations of the park;

(d) The name and address of the person who is the landlord, and if such person does not reside in the state there shall also be designated by name and address a person who resides in the county where the mobile home park is located who is authorized to act as agent for the purposes of service of notices and process. If no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered the agent;

(e) The name and address of any party who has a secured interest in the mobile home, manufactured home, or park model;

(f) A forwarding address of the tenant or the name and address of a person who would likely know the whereabouts of the tenant in the event of an emergency or an abandonment of the mobile home, manufactured home, or park model;

(g)(i) A covenant by the landlord that, except for acts or events beyond the control of the landlord, the mobile home park will not be converted to a land use that will prevent the space that is the subject of the lease from continuing to be used for its intended use for a period of three years after the beginning of the term of the rental agreement;

(ii) A rental agreement may, in the alternative, contain a statement that: "The park may be sold or otherwise transferred at any time with the result that subsequent owners may close the mobile home park, or that the landlord may close the park at any time after the required notice." The covenant or statement required by this subsection must: (A) Appear in print that is in bold face and is larger than the other text of the rental agreement; (B) be set off by means of a box, blank space, or comparable visual device; and (C) be located directly above the tenant's signature on the rental agreement.

(h) The terms and conditions under which any deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement if any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a rental agreement;

(i) A listing of the utilities, services, and facilities which will be available to the tenant during the tenancy and the nature of the fees, if any, to be charged;

(j) A description of the boundaries of a mobile home space sufficient to inform the tenant of the exact location of the tenant's space in relation to other tenants' spaces;

(k) A statement of the current zoning of the land on which the mobile home park is located; and

(l) A statement of the expiration date of any conditional use, temporary use, or other land use permit subject to a fixed expiration date that is necessary for the continued use of the land as a mobile home park.

(2) Any rental agreement executed between the landlord and tenant shall not contain any provision:

(a) Which allows the landlord to charge a fee for guest parking unless a violation of the rules for guest parking occurs: PROVIDED, That a fee may be charged for guest parking which covers an extended period of time as defined in the rental agreement;

(b) Which authorizes the towing or impounding of a vehicle except upon notice to the owner thereof or the tenant whose guest is the owner of the vehicle;

(c) Which allows the landlord to alter the due date for rent payment or increase the rent: (i) During the term of the rental agreement if the term is less than one year, or (ii) more frequently than annually if the term is for one year or more: PROVIDED, That a rental agreement may include an escalation clause for a pro rata share of any increase in the mobile home park's real property taxes or utility assessments or charges, over the base taxes or utility assessments or charges of the year in which the rental agreement took effect, if the clause also provides for a pro rata reduction in rent or other charges in the event of a reduction in real property taxes or utility assessments or charges, below the base year: PROVIDED FURTHER, That a rental agreement for a term exceeding one year may provide for annual increases in rent in specified amounts or by a formula specified in such agreement;

(d) By which the tenant agrees to waive or forego rights or remedies under this chapter;

(e) Allowing the landlord to charge an "entrance fee" or an "exit fee." However, an entrance fee may be charged as part of a continuing care contract as defined in RCW 70.38.025;

(f) Which allows the landlord to charge a fee for guests: PROVIDED, That a landlord may establish rules charging for guests who remain on the premises for more than fifteen days in any sixty-day period;

(g) By which the tenant agrees to waive or forego homestead rights provided by chapter 6.13 RCW. This subsection shall not prohibit such waiver after a default in rent so long as such waiver is in writing signed by the husband and wife or by an unmarried claimant and in consideration of the landlord's agreement not to terminate the tenancy for a period of time specified in the waiver if the landlord would be otherwise entitled to terminate the tenancy under this chapter; or

(h) By which, at the time the rental agreement is entered into, the landlord and tenant agree to the selection of a particular arbitrator.

[2006 c 296 § 2; 2002 c 63 § 1; 1999 c 359 § 5. Prior: 1990 c 174 § 1; 1990 c 169 § 1; 1989 c 201 § 9; 1984 c 58 § 1; 1981 c 304 § 18; 1979 ex.s. c 186 § 4; 1977 ex.s. c 279 § 6.]

Notes:

Prospective application -- 2006 c 296 § 2: "With respect to written mobile or manufactured home space rental agreements in effect on June 7, 2006, section 2 of this act applies prospectively when the term of the tenancy under the agreement is renewed." [2006 c 296 § 4.]

Severability -- 1984 c 58: See note following RCW 59.20.200.

Severability -- 1981 c 304: See note following RCW 26.16.030.

Severability -- 1979 ex.s. c 186: See note following RCW 59.20.030.

RCW 59.20.073
Transfer of rental agreements.

(1) Any rental agreement shall be assignable by the tenant to any person to whom he or she sells or transfers title to the mobile home, manufactured home, or park model.

(2) A tenant who sells a mobile home, manufactured home, or park model within a park shall notify the landlord in writing of the date of the intended sale and transfer of the rental agreement at least fifteen days in advance of such intended transfer and shall notify the buyer in writing of the provisions of this section. The tenant shall verify in writing to the landlord payment of all taxes, rent, and reasonable expenses due on the mobile home, manufactured home, or park model and mobile home lot.

(3) The landlord shall notify the selling tenant, in writing, of a refusal to permit transfer of the rental agreement at least seven days in advance of such intended transfer.

(4) The landlord may require the mobile home, manufactured home, or park model to meet applicable fire and safety standards if a state or local agency responsible for the enforcement of fire and safety standards has issued a notice of violation of those standards to the tenant and those violations remain uncorrected. Upon correction of the violation to the satisfaction of the state or local agency responsible for the enforcement of that notice of violation, the landlord's refusal to permit the transfer is deemed withdrawn.

(5) The landlord shall approve or disapprove of the assignment of a rental agreement on the same basis that the landlord approves or disapproves of any new tenant, and any disapproval shall be in writing. Consent to an assignment shall not be unreasonably withheld.

(6) Failure to notify the landlord in writing, as required under subsection (2) of this section; or failure of the new tenant to make a good faith attempt to arrange an interview with the landlord to discuss assignment of the rental agreement; or failure of the current or new tenant to obtain written approval of the landlord for assignment of the rental agreement, shall be grounds for disapproval of such transfer.

[2003 c 127 § 3; 1999 c 359 § 7; 1993 c 66 § 17; 1981 c 304 § 20.]

Notes:
Severability -- 1981 c 304: See note following RCW 26.16.030.

APPENDIX B

Westlaw.

192 P.3d 378
146 Wash.App. 546, 192 P.3d 378
(Cite as: 146 Wash.App. 546, 192 P.3d 378)

Court of Appeals of Washington,
Division 1.
LITTLE MOUNTAIN ESTATES TENANTS ASSOCIATION, a Washington Non-profit corporation, as assignee, Jerry Jewett Virginia Hadleman, Marie McCutchin, and Wes Walton, on behalf of themselves and classes of similarly situated persons, Appellants,
v.
LITTLE MOUNTAIN ESTATES MHC LLC, a Limited Liability Company, Peregrine Holdings, LLC, Kevin A. Ware and Kari M. Ware, husband and wife and the marital community composed thereof, Respondents.
No. 57810-3-I.

July 21, 2008.
Publication Ordered Sept. 15, 2008.

Background: Mobile home tenants and association brought action against park, alleging that leases violated the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA) and the Consumer Protection Act (CPA). The Superior Court, Skagit County, Susan K. Cook, J., entered summary judgment in part for park, and, following a bench trial, entered judgment for park. Tenants appealed.

Holdings: The Court of Appeals, Schindler, C.J., held that:
(1) assignment clauses which shortened lease duration in event of assignment violated the MHLTA;
(2) park did not intend to enter into any agreement with tenants through brochures and advertisements;
(3) tenants' failure to assign error to trial court findings that terms in attachments were part of lease precluded them from prevailing on appeal on claim that they did not agree to terms of attachments;
(4) issue of whether could prove a CPA violation based on MHLTA violation required remand; and
(5) tenants were entitled to attorney's fees as the prevailing party on appeal.

Affirmed in part, reversed in part, vacated in part, and remanded.

West Headnotes

[1] Appeal and Error 30 ⇐1079

30 Appeal and Error
30XVI Review
30XVI(K) Error Waived in Appellate Court
30k1079 k. Insufficient Discussion of Objections. Most Cited Cases
Mobile home park tenants failed in appellate brief to argue assignments of error that trial court erred in dismissing park's owners from suit, in ruling that leases did not violate the statute of fraud, in granting partial summary judgment as to a Consumer Protection Act violation regarding security gate, in dismissing retaliation claims, and excluding tenants' expert witness, and thus consideration was waived on appeal and Court of Appeals would not consider the arguments. RAP 10.3(a)(6).

[2] Landlord and Tenant 233 ⇐373

233 Landlord and Tenant
233XII Mobile Homes and Mobile Home Parks
233k373 k. Assignment and Subletting. Most Cited Cases
Assignment clauses in 25-year mobile home lease agreements which converted them to one-year or two-year leases in the event of assignment conflicted with the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), which required rental agreements to be assignable, and thus were unenforceable; tenants had the statutory right under the MHLTA to assign the lease, and MHLTA prohibited leases from containing provisions requiring a tenant to waive or forego a statutory right. West's RCWA 59.20.040, 59.20.060(2)(d), 59.20.070(1),

59.20.073(1).

[3] Landlord and Tenant 233 ⚿371

233 Landlord and Tenant
233XII Mobile Homes and Mobile Home Parks
233k371 k. Constitutional and Statutory Provisions. Most Cited Cases
The legislative purpose in enacting the Manufactured/Mobile Home Landlord Tenant Act (MHLTA) was to regulate and protect mobile home owners by providing a stable, long-term tenancy for home owners living in a mobile home park. West's RCWA 59.22.010(2).

[4] Assignments 38 ⚿18

38 Assignments
38I Property, Estates, and Rights Assignable
38k17 Executory Contracts
38k18 k. In General. Most Cited Cases
The general rule under common law with respect to the assignment of contract rights is that such rights may be freely assigned unless prohibited by statute.

[5] Assignments 38 ⚿90

38 Assignments
38V Rights and Liabilities
38k90 k. Nature and Extent of Rights of Assignee in General. Most Cited Cases
An assignee of a contract steps into the shoes of the assignor and has all the rights of the assignor, including all applicable statutory rights.

[6] Contracts 95 ⚿227

95 Contracts
95II Construction and Operation
95II(E) Conditions
95k227 k. Waiver. Most Cited Cases
Washington courts review waiver clauses strictly and enforce them only if their language is sufficiently clear.

[7] Landlord and Tenant 233 ⚿372

233 Landlord and Tenant
233XII Mobile Homes and Mobile Home Parks
233k372 k. Leases and Agreements. Most Cited Cases
Any agreement to waive a right under the Manufactured/Mobile Home Landlord Tenant Act (MHLTA) must be in a writing that is separate from the lease agreement. West's RCWA 59.20.060(2)(d).

[8] Landlord and Tenant 233 ⚿372

233 Landlord and Tenant
233XII Mobile Homes and Mobile Home Parks
233k372 k. Leases and Agreements. Most Cited Cases

Landlord and Tenant 233 ⚿383.1

233 Landlord and Tenant
233XII Mobile Homes and Mobile Home Parks
233k383 Rent and Other Charges
233k383.1 k. In General. Most Cited Cases
Mobile home park did not intend to enter into any agreement with tenants through brochures and advertisements, which allegedly contained terms which conflicted with written leases' rent adjustment formula, and thus adjustment formula in written agreements was valid and enforceable; advertising materials explicitly stated that the "details of this are specified in the lease."

[9] Contracts 95 ⚿27

95 Contracts
95I Requisites and Validity
95I(B) Parties, Proposals, and Acceptance
95k27 k. Implied Agreements. Most Cited Cases
An implied contract occurs when, through a course of dealing and common understanding, the parties show a mutual intent to enter into a contract.

[10] Contracts 95 ⚖17

95 Contracts
95I Requisites and Validity
95I(B) Parties, Proposals, and Acceptance
95k17 k. Request or Advertisement for Proposals. Most Cited Cases
Generally, an advertisement is not a contract offer.

[11] Appeal and Error 30 ⚖754(1)

30 Appeal and Error
30XI Assignment of Errors
30k754 Effect of Failure to Assign Particular Errors
30k754(1) k. In General. Most Cited Cases
Mobile home park tenants' failure on appeal to assign error to trial court's findings of fact which specifically provided that the terms in attachments were part of the lease the tenants signed precluded them from prevailing on appeal on claim that they did not agree to terms of attachments which they alleged were not attached to the lease when executed.

[12] Antitrust and Trade Regulation 29T ⚖ 128

29T Antitrust and Trade Regulation
29TIII Statutory Unfair Trade Practices and Consumer Protection
29TIII(A) In General
29Tk126 Constitutional and Statutory Provisions
29Tk128 k. Purpose and Construction in General. Most Cited Cases
The purpose of the Consumer Protection Act is to protect citizens from unfair and deceptive trade and commercial practices. West's RCWA 19.86.010 et seq.

[13] Appeal and Error 30 ⚖1177(6)

30 Appeal and Error
30XVII Determination and Disposition of Cause
30XVII(D) Reversal
30k1177 Necessity of New Trial
30k1177(6) k. Issues Not Passed on Below. Most Cited Cases
Issue of whether mobile home park tenants could prove a violation of the Consumer Protection Act based on leases' violation of the Manufactured/Mobile Home Landlord Tenant Act (MHLTA) required remand. West's RCWA 19.86.010 et seq., 59.20.010 et seq.

[14] Costs 102 ⚖252

102 Costs
102X On Appeal or Error
102k252 k. Attorney Fees on Appeal or Error. Most Cited Cases
Mobile home park tenants, as the prevailing party on appeal in action against park, were entitled to reasonable attorney fees. RAP 18.1.

****379** Thomas P. Sughrua, Sughrua & Associates, Seattle, WA, T. Reinhard G 'ron' Wolff, Attorney at Law, Conway, WA, Philip James Buri, Buri FunstonMumford PLLC, Bellingham, WA, for Appellants.

C. Thomas Moser, Attorney at Law, Mount Vernon, WA, Michael Barr King, Sidney Charlotte Tribe, Talmadge Fitzpatrick PLLC, Tukwila, WA, Troy Robert Nehring, Olsen Law Firm PLLC, Kent, WA, for Respondents.

SCHINDLER, C.J.

***550** ¶ 1 The Manufactured/Mobile Home Landlord Tenant Act (MHLTA), chapter 59.20 RCW, governs the legal rights and obligations between mobile home park landlords and tenants. Under the MHLTA, a tenant has the right to assign a rental agreement. A rental agreement cannot contain any provision that waives a tenant's rights under the MHLTA, and if a provision in the rental agreement conflicts with the MHLTA, it is unenforceable. The "Little Mountain Estates 25 Year Lease Agree-

ment," contains a rent adjustment formula tied to the Consumer Price Index (CPI) and a provision stating that when a tenant assigns a lease to a new owner, the remainder of the tenant's 25-year term is automatically converted to a one-year or a two-year term. We reject the tenants' argument that the court erred in enforcing the rent adjustment ***551** formula in the lease agreement. However, because the tenants had the right to assign their leases under the ****380** MHLTA and could not waive that right in the lease agreement, we reverse the trial court's determination that as a matter of law the conversion clause in the 25-year lease agreement did not violate the MHLTA. We also remand to address the tenants' Consumer Protection Act (CPA), chapter 19.86 RCW, claim.

FACTS

¶ 2 In August 2002, the Little Mountain Estates Tenants Association and tenants Jerry Jewett, Virginia Haldeman, Marie McCutchin, and Wes Walton (collectively "the tenants") sued Little Mountain Estates Manufactured Home Community, LLC (LME).

¶ 3 LME was built in the early 1990s as an upscale, gated, 120-lot manufactured housing community for older adults. LME struggled to find tenants because of the economic and political instability in the early 1990s. In an effort to attract tenants, LME entered into a marketing agreement with a manufactured homes dealer, Lamplighter Homes (Lamplighter). From 1990 to 1997, LME offered a 25-year lease with a maximum annual rent increase tied to the Consumer Price Index (CPI) to tenants who either purchased a model home from Lamplighter or purchased and moved a new manufactured home to LME. LME and Lamplighter advertised the 25-year lease through radio, brochures and other written advertisements. Some of the written advertisements state that the details of the rental agreement would be "specified in the lease." [FN1]

FN1. Exhibit 16.

¶ 4 The new manufactured homes purchased by the tenants cost between $60,000 and $80,000. To "[i]nsure quality and overall community appearance" of LME, the tenants also had to comply with the requirements of the "Little Mountain Estates Park Amenity Package" prior to moving ***552** in. The mandatory amenity package included requirements to install concrete slabs, a concrete sidewalk to the street or a driveway, "pit set" [FN2] the manufactured home on the lot, install sewer, water, and electrical connections, and complete landscaping according to the LME specifications. The cost of the improvements required by the mandatory amenity package ranged from $15,000 to $18,000.

FN2. "Pit setting" requires more excavation before setting the home than a "ground set" mobile home and is more expensive.

¶ 5 It is undisputed that the tenants did not sign written lease agreements before moving in. It is also undisputed that after moving in, each of the tenants and LME entered into the "Little Mountain Estates 25 Year Lease Agreement." The lease unequivocally provides a tenancy of 25 years for a designated space at LME. The lease also sets forth the amount of rent due each month for the first year. Thereafter, the amount "shall be subject to an annual formula per Attachment A." For example, the lease signed by Jerry and Betty Jewett provides:

1. DESCRIPTION OF PREMISES: Landlord hereby leases to Tenant that certain space in the County of Skagit, State of Washington described as space number 38, Little Mountain Estates, Skagit County, Washington.

2. TERM: The term of this tenancy **shall be twenty-five years** commencing on 12-1-94, and continuing through Nov. 30, 2019.

3. RENT: Tenant shall pay to Landlord $310.00 per

month as rent; through Nov. 30, 1995 and thereafter shall be subject to an annual adjustment formula per Attachment A.... [FN3]

FN3. Emphasis added.

¶ 6 The assignment provision in the LME 25-Year Lease Agreement states that the lease is assignable subject to the limitations in "Attachment B."

ASSIGNMENT; SUBLETTING: This lease is assignable, providing that such assignment conforms with the limitations and language in Attachment 'B'. Subletting the manufactured home, the lot space, or any part thereof is not permitted.

*553 The one-page attachment to the 25-year lease, titled "Little Mountain Estates," includes**381 Attachment A and Attachment B. Attachment A is clearly labeled "RENT ADJUSTMENT FORMULA" and is set forth first. It contains a description of the Consumer Price Index (CPI) and the formula for calculating rent adjustments. Halfway down the page is the heading "Attachment 'B.' " Attachment B does not have a similar label to explain its purpose. Attachment B states that the tenant can assign the lease to a new owner subject to the conditions set forth in five different subsections, subsections (a) to (e).

¶ 7 Subsection (a) of Attachment B requires the tenant to pay all outstanding rent, taxes, and fees prior to transferring the lease. Subsection (b) addresses the requirements for the landlord's approval of the assignment. Subsection (c) states that upon assignment, the lease agreement is automatically converted to a one-year or a two-year lease. Subsection (d) states that the assignment provision applies to all transfers and subsection (e) allows LME to assign its interest in the lease to a third party purchaser. Attachment B provides:

This lease shall be assignable by tenant only to a person to whom Tenant sells or transfers title to the manufactured home on said lot subject to the following:

(a) All outstanding taxes, rents and/or fees owed by the tenant must be paid prior to such transfer.

(b) Subject to the approval of Landlord after fifteen (15) days written notice by Tenant of such intended assignment. Landlord shall approve or disapprove of the assignment of this lease on the same basis that Landlord approves or disapproves of any new tenant or manufactured home.

(c) Upon assignment by Tenant of Tenant's leasehold interest in the homesite, this rental agreement shall automatically convert to a one (1) year lease beginning on the effective date of the assignment. The new monthly rent shall be charged by Landlord following the most recent rent increase for the park proceeding the effective date of the assignment.

(d) Assignment as defined in this paragraph shall apply to all voluntary transfers and involuntary transfers of Tenant, including*554 a transfer between married tenants pursuant to a divorce decree, separation agreement, or similar document or order, or a transfer in a bankruptcy or other insolvency proceeding.

(e) Landlord shall assign its interest in this agreement to any third party who purchases the park.

¶ 8 One of the owners of LME, Paul Ware, testified that the 25-year lease was a means to attract tenants, but because the average age of the tenants who moved into LME was 70, LME anticipated that most of the tenants would only actually live at the mobile home park for approximately five years.

Q. [I]n order to stem the loss of money, the 25-year lease was created as an inducement?

A. Yes.

Q. And at the time that you created that inducement you knew that the average age of the people coming in was roughly 70?

A. Yes.

Q. And you knew that their average length of stay was about five years?

A. Yes.

Q. And you knew that they would have to spend anywhere between $15,000 and $18,000 to set up their home?

A. Yes.

¶ 9 According to Ware, the reason for the unadvertised assignment conversion clause in Attachment B was to maximize the owners' profits when the tenants sold their homes.

[T]he reason we did that was because at a point, you know, as the 25-year leases-if they stayed there 25-years, God loves them, we're glad that they lived that long. But if they didn't and they moved out, those leases would convert to a one-year lease, and eventually we would start getting a return for our investments.

¶ 10 The tenants' lawsuit against LME asserted that the lease agreement violated the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), chapter 59.20 RCW, and the Consumer Protection Act (CPA), chapter 19.86 RCW. The ***555** lawsuit alleged that ****382** many of the tenants were unaware of the assignment conversion clause in Attachment B, the conversion of their 25-year tenancy to a one-year or two-year term reduced their ability to sell their homes, the rent adjustment formula in Attachment A was unenforceable, and LME had arbitrarily increased the rent in violation of the lease agreement. The tenants sought declaratory and injunctive relief, monetary damages, and attorney fees and costs.

¶ 11 After a series of summary judgment motions and a nine-day trial, the court enforced the assignment conversion clause and, with some modifications to the rent adjustment formula, enforced the other terms of the lease. In one of the early summary judgment motions, the court ruled as a matter of law, that the provision in Attachment B automatically converting the 25-year lease to a one-year or two-year lease upon assignment did not violate the MHLTA or the CPA.

(1) Plaintiffs' claims that paragraph 6 of the 'Little Mountain Estates 25 year Lease agreement' and its 'Exhibit B' violate the mobile home/ manufactured landlord tenant act (RCW 59.20. et seq.) or the Consumer Protection Act (RCW 19.86 et seq.) are dismissed with prejudice; and

(2) Paragraph 6 of the "Little Mountain Estates 25 Year Lease Agreement" and its "Exhibit B" are not prohibited by the Mobile Home/Manufactured Home Landlord Tenant Act (RCW 59.20 et. seq.).[FN4]

FN4. The court later dismissed park owners Kevin and Kari Ware in part, several of the tenants' causes of action, and the tenants' CPA and retaliation claims.

¶ 12 Following trial, the court entered extensive findings of fact and conclusions of law. The court concluded that even though LME violated the MHLTA by allowing tenants to move in without first signing a lease agreement, the tenants were bound by the terms of the 25-year lease that they voluntarily entered into after moving into LME. But because the court concluded that the CPI rent formula in Attachment A did not make sense and was ambiguous, the ***556** court modified the formula. Otherwise, the court ruled that the lease was enforceable. In the conclusions of law, the court reiterated its previous ruling that the assignment conversion clause in Attachment B did not violate the

MHLTA or the CPA.[FN5]The tenants appeal.

FN5. "The provision contained in the 25-Year Lease Agreement which converted the 25-[y]ear term of the Lease (to a one or two-year term upon assignment of the Lease) does not violate RCW 59.20.073, or any other provision of [c]hapter 59.20 RCW." Findings of Fact and Conclusions of Law 7.

ANALYSIS

[1] ¶ 13 The tenants assert that the trial court erred in ruling on summary judgment that the conversion clause in Attachment B does not violate the MHLTA or the CPA. The tenants also assert that the trial court erred in enforcing the rent adjustment provision in Attachment A because the terms materially altered the terms of the offer LME made to the tenants in its advertisements.[FN6]

FN6. Although the tenants also contend that the trial court erred by dismissing park owners, Kevin and Kari Ware, ruling that LME's unacknowledged leases did not violate the statute of fraud, granting partial summary judgment as to a CPA violation regarding the security gate, granting partial summary judgment dismissing retaliation claims, and excluding the tenants' expert witness, they fail to argue these assignments of error in their brief. Because the tenants do not support these assignments of error with argument, consideration is waived on appeal. RAP 10.3(a)(6); *Bercier v. Kiga,* 127 Wash.App. 809, 824, 103 P.3d 232 (2004). In addition, to the extent the tenants do not make arguments related to the assignments of error to the court's findings and conclusions, those arguments are also waived. *Cowiche Canyon Conservancy v. Bosley,* 118 Wash.2d 801, 809, 828 P.2d 549 (1992).

¶ 14 We review summary judgment de novo and engage in the same inquiry as the trial court. *Heath v. Uraga,* 106 Wash.App. 506, 512, 24 P.3d 413 (2001). Summary judgment is proper if the pleadings, depositions, answers, and admissions, together with the affidavits, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). We view the facts and reasonable inferences in a light most favorable to the nonmoving party. *Michak v. Transnation **383 Title Ins. Co.,* 148 Wash.2d 788, 794, 64 P.3d 22 (2003). Summary judgment is appropriate if, in view of all the ***557** evidence, reasonable persons could reach only one conclusion. *Hansen v. Friend,* 118 Wash.2d 476, 485, 824 P.2d 483 (1992).

Manufactured/Mobile Home Landlord Tenant Act

[2] ¶ 15 The tenants contend that the trial court erred in ruling on summary judgment that the provision in Attachment B converting the term of the lease from a 25-year lease to a one-year or two-year term upon assignment of the lease to a new owner did not violate the MHLTA or the CPA. The tenants assert that because a tenant has the statutory right under the MHLTA to assign the lease, and the lease cannot contain a provision that requires the tenant to waive or forego a statutory right, the conversion clause provision is unenforceable. LME asserts that the lease provision complies with the MHLTA because the tenants have the right to assign the lease, but the MHLTA does not give the tenants the right to assign the remainder of the term of the lease.

¶ 16 Statutory interpretation is a question of law we review de novo. *Dep't of Ecology v. Campbell & Gwinn, LLC,* 146 Wash.2d 1, 9, 43 P.3d 4 (2002). If the statute's meaning is plain on its face, we give effect to that plain meaning. *Campbell & Gwinn,*

146 Wash.2d at 9-10, 43 P.3d 4. We look to the legislative enactment as a whole to determine the meaning. *State v. Pac. Health Ctr., Inc.,* 135 Wash.App. 149, 159, 143 P.3d 618 (2006). To properly interpret a statute, courts must read statutory provisions together, not in isolation. *Judd v. Am. Tel. & Tel. Co.,* 152 Wash.2d 195, 203, 95 P.3d 337 (2004), *rev. denied,*162 Wash.2d 1002, 175 P.3d 1092 (2007).

¶ 17 A statute is ambiguous if it has two or more reasonable interpretations, but not "merely because different interpretations are conceivable." *Cerrillo v. Esparza,* 158 Wash.2d 194, 201, 142 P.3d 155,*rev. denied,*156 Wash.2d 1010, 132 P.3d 146 (2006). If a statute is ambiguous, we may resort to legislative history. ***558** *Campbell & Gwinn,* 146 Wash.2d at 12, 43 P.3d 4. "Ultimately, in resolving a question of statutory construction, this court will adopt the interpretation which best advances the legislative purpose." *Bennett v. Hardy,* 113 Wash.2d 912, 928, 784 P.2d 1258 (1990), quoting, *In re R.,* 97 Wash.2d 182, 187, 641 P.2d 704 (1982).

[3] ¶ 18 The MHLTA determines the legal rights, remedies, and obligations arising from a rental agreement between a mobile home lot tenant and the mobile home park landlord. RCW 59.20.040. The legislative purpose in enacting the MHLTA was to regulate and protect mobile home owners by providing a stable, long-term tenancy for home owners living in a mobile home park. *Holiday Resort,* 134 Wash.App. at 224, 135 P.3d 499. According to legislative findings,

> ... [it] is the intent of the legislature, in order to maintain low-cost housing in mobile home parks to benefit the low income, elderly, poor and infirmed, to encourage and facilitate the conversion of mobile home parks to resident ownership, to protect low-income mobile home park residents from both physical and economic displacement, to obtain a high level of private financing for mobile home park conversions, and to help establish acceptance for resident-owned mobile home parks in the private market.

RCW 59.22.010(2). The legislature also found that "many homeowners who reside in mobile home parks are also those residents most in need of reasonable security in the siting of their manufactured homes." Former RCW 59.23.005 (1994).

¶ 19 Here, there is no dispute that, according to the signed lease agreements, the tenants have the right to a 25-year lease. Additionally, it is undisputed that the tenants have the unequivocal right to sell their mobile homes under RCW 59.20.070(1). RCW 59.70.070(1) provides that:

¶ 20**Prohibited acts by landlord.** A landlord shall not:

> ***559** (1) Deny any tenant the right to sell such tenant's mobile home, manufactured home, or park model within a park or require the removal of the mobile home, manufactured home, or park model from the park because of the ****384** sale thereof. Requirements for the transfer of the rental agreement are in RCW 59.20.073.

¶ 21RCW 59.20.073(1) provides that "[a]ny rental agreement shall be assignable by the tenant to any person to whom he or she sells or transfers title to the mobile home, manufactured home, or park model." The MHLTA also expressly states that any executed rental agreement between the landlord and tenant "shall not contain any provision ... [b]y which the tenant agrees to waive or forego rights" under the MHLTA. RCW 59.20.060(2)(d). In addition, RCW 59.20.020 imposes an obligation to act in good faith,[FN7] and under RCW 59.20.040 a rental agreement "shall be unenforceable to the extent of any conflict with any provision of this chapter."

> FN7. "Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a

> right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement." RCW 59.20.020.

¶ 22 LME argues that as long as the landlord allows the tenant to assign the rental agreement, nothing in the statute prohibits the landlord from then converting the remaining 25-years lease term to a one-year or a two-year term. LME also asserts that because tenants voluntarily signed the lease, the tenants are bound by their agreement under general principles of contract law. But this argument ignores the MHLTA, which is the controlling law in this case.

¶ 23 The trial court also read the statute narrowly to conclude,

> the provision contained in the 25-Year Lease Agreement which converted the 25-Year term of the lease (to a one or two-year term upon assignment of the lease) does not violate RCW 59.20.073, or any other provision of Chapter 59.20 RCW.

We reject LME's narrow interpretation of the MHLTA and RCW 59.20.073(1).

***560** ¶ 24 This court's primary goal in interpreting statutes is "to ascertain and give effect to legislative intent." *Pac. Health Ctr.*, 135 Wash.App. at 158-59, 143 P.3d 618. The plain language of RCW 59.20.073(1) provides that tenants have the right to assign their rental agreements and does not contain any limitation on the right to do so. When the plain language of the statute is subject to more than one reasonable interpretation, we look to the principles of statutory construction, legislative history, and case law. *Cockle v. Dep't of Labor & Indus.*, 142 Wash.2d 801, 808, 16 P.3d 583 (2001). And when enacting a statute, we presume the legislature knows the existing state of the case law. *Woodson v. State*, 95 Wash.2d 257, 266-62, 623 P.2d 683 (1980).

[4][5] ¶ 25 The MHLTA does not define "assignment." But the general rule under common law with respect to the assignment of contract rights is that such rights may be freely assigned unless prohibited by statute. *Federal Fin. Co. v. Gerard*, 90 Wash.App. 169, 177, 949 P.2d 412 (1998). An assignee of a contract "steps into the shoes of the assignor' " and has all the rights of the assignor, including all applicable statutory rights. *Puget Sound Nat'l Bank v. State Dep't of Revenue*, 123 Wash.2d 284, 292, 868 P.2d 127 (1994) quoting, *Estate of Jordan v. Hartford Accident & Indem. Co.*, 120 Wash.2d 490, 495, 844 P.2d 403 (1993). Because RCW 59.20.073(1) states that "any rental agreement shall be assignable," and the rental agreements here were for 25-year leases, we conclude that the unambiguous language of RCW 59.20.073(1) supports the conclusion that the tenants had the right to assign the remaining term of the 25-year lease.

¶ 26 Construing RCW 59.20.073(1) to mean the tenants have the right to assign the remaining term of their rental or lease agreement is also consistent with the legislative intent to protect mobile home owners.

[6][7] ¶ 27 In addition, Washington courts review waiver clauses strictly and enforce them only if their language is sufficiently clear. *Chauvlier v. Booth Creek Ski Holdings, Inc.*, 109 Wash.App. 334, 339-40, 35 P.3d 383 (2001). And any ***561** agreement to waive a right under the MHLTA must be in a writing that is separate from the lease agreement. Holiday Resort Cmty. *Ass'n v. Echo Lake Assoc., LLC*, 134 Wash.App. 210, ****385** 225, 135 P.3d 499 (2006)*rev. denied*,160 Wash.2d 1019, 163 P.3d 793 (2007).

¶ 28 Here, because there is no dispute that the lease agreement required the tenants to give up their right to assign the remainder of their 25-year lease, the provision is an unenforceable waiver of the tenants' rights under the MHLTA. We conclude that the assignment clause converting the 25-year lease to a

one-year or two-year lease is unenforceable because it conflicts with the MHLTA.

Rent Adjustment Formula

[8] ¶ 29 The tenants also contend the trial court erred by enforcing the rent adjustment formula in Attachment A because it materially altered the terms of the offer LME made to the tenants in its brochures and advertisements. LME asserts that the advertising materials did not constitute an offer and the written agreement controls. We agree with LME.

[9][10] ¶ 30 An implied contract occurs when, through a course of dealing and common understanding, the parties show a mutual intent to enter into a contract. *Harberd v. City of Kettle Falls,* 120 Wash.App. 498, 516, 84 P.3d 1241 (2004). Generally, an advertisement is not an offer. 25 David K. DeWolf & Keller W. Allen, Washington Practice: *Tort Law and Practice,* § 2:12 (2d ed.2007). Here, there was no mutual intent to enter into an oral agreement. The record reveals that Little Mountain intended the lease agreement to control, as demonstrated by the fact that the advertising materials explicitly stated "[t]he details of this are specified in the lease."

Enforceability of Lease Attachments

[11] ¶ 31 The tenants contend that even if the written lease is enforceable, they did not agree to the terms of Attachment A and B which were not attached to the lease when they were executed. We review the trial court's decision in a bench trial to determine whether challenged ***562** findings are supported by substantial evidence and whether the findings support the conclusions of law. *Dorsey v. King County,* 51 Wash.App. 664, 668-69, 754 P.2d 1255 (1988). Findings of fact are considered verities on appeal as long as they are supported by substantial evidence in the record. *In re Marriage of Thomas,* 63 Wash.App. 658, 660, 821 P.2d 1227 (1991). Substantial evidence is a quantum of evidence sufficient to persuade a rational fair-minded person that the premise is true. *Wenatchee Sportsmen Ass'n v. Chelan County,* 141 Wash.2d 169, 176, 4 P.3d 123 (2000). The tenants did not assign error to the following findings of fact:

20. The Lease provided that the 25-Year term would convert to a one or two-year term upon the 25-Year Residents' sale of their home, and assignment of the lease.

21. The Lease provided that a certain rent would be charged for the first year of the Lease, and that periodic annual adjustments to the rent would be made as provided by the Lease's 'Attachment A.'

Because these findings specifically provide that the terms in Attachment A and B were part of the lease the tenants signed, we reject the argument that the lease did not include the attachments.

Consumer Protection Act

¶ 32 The tenants also assert that LME's violation of the MHLTA violated the CPA. LME contends that the lease did not violate the CPA because it did not mislead the public.

[12] ¶ 33 The purpose of the CPA is to protect citizens from unfair and deceptive trade and commercial practices. *Stephens v. Omni Insurance Co.,* 138 Wash.App. 151, 170, 159 P.3d 10 (2007), *rev. granted,* 163 Wash.2d 1012, 180 P.3d 1290, 2008 LEXIS 284 (Apr. 1, 2008). To show that there is a violation of the CPA, the tenants must prove five elements: "(1) unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) public interest impact, (4) injury to plaintiff in his or her business or property, (5) causation." *Omni Insurance,* 138 Wash.App. at 166, 159 P.3d 10. The tenants' failure to establish any of the ***563** elements is fatal to their CPA claim. *Holiday Resort,* 134

Wash.App. at 225, 135 P.3d 499.

**386 [13] ¶ 34 In *Holiday Resort,* we addressed a similar issue and held that even though the rental agreement violated the MHLTA, whether the violation had the capacity to deceive a substantial portion of the public was a question of fact. *Holiday Resort,* 134 Wash.App. at 226-27, 135 P.3d 499. Here, because the court did not reach the question of whether the tenants could prove a violation of the CPA, we remand.

Attorney Fees

[14] ¶ 35 Both parties request an award of attorney fees based on RCW 59.20.110. RCW 59.20.110 provides: "[i]n any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs." The lease agreement between the parties also provides attorney fees to the prevailing party in any action to enforce a provision of the lease. Additionally, under RAP 18.1, the prevailing party is entitled to attorney fees on appeal. *Gillette v. Zakarison,* 68 Wash.App. 838, 846 P.2d 574 (1993). As the prevailing party, the tenants are entitled to reasonable attorney fees upon compliance with Rap 18.1.

CONCLUSION

¶ 36 We affirm in part, reverse in part, vacate the trial court's award of attorney fees, and remand.[FN8]

FN8. Because we remand, we need not address the tenants' other arguments.

Wash.App. Div. 1,2008.
Little Mountain Estates Tenants Ass'n v. Little Mountain Estates MHC LLC
146 Wash.App. 546, 192 P.3d 378

END OF DOCUMENT

APPENDIX C

Little Mountain ESTATES

25 YEAR LEASE AGREEMENT

This Lease Agreement is executed at Skagit County, WA on May 23, 1993, between Little Mountain Estates (hereinafter "Landlord") and Dyce E. Bailey (hereinafter "Tenant"), who agree as follows:

1. DESCRIPTION OF PREMISES: Landlord hereby leases to Tenant that certain space in the County of Skagit, State of Washington described as space number 93, Little Mountain Estates, Skagit County, Washington.

2. TERM: The term of this tenancy shall be twenty-five years commencing on May 23, 1993, and continuing through May 22, ~~19~~ 2118.

3. RENT: Tenant shall pay to Landlord 285.00 per month as rent; through May 22, ~~19~~ 1994 and thereafter shall be subject to an annual adjustment formula per Attachment A; said rent shall be due and payable in advance on the first day of each calendar month, and Tenant shall pay the rent to Landlord, without deduction or offset, at the office of the Landlord's resident manager, or at such other places as Landlord may designate from time to time.

ALL PRORATED RENTS SHALL BE COMPUTED ON THE BASIS OF A THIRTY (30) DAY MONTH

If the rent is not paid by the FIFTH day of any calendar month, Tenant shall be required to pay to Landlord a service charge of $25.00 plus $2.00 per day, computed from the second day of the month to the day of payment, both inclusive. In addition to the foregoing, if any check tendered by Tenant for payment of rent is returned by the bank for any reason, Should the landlord be required to issue a formal notice under RCW 59.20, the tenant shall be charged $25.00.

4. CHARGES FOR UTILITIES: Basic cable television service and maintenance of the Clubhouse & Common Areas are included in the rent. Other services shall be the sole responsibility of the Tenant. (Note: Utilities and services not included in the rent and not billed by the Landlord will be billed to Tenant directly by the utility or service company involved.) Separate charges for R.V./camper storage (if any) will be billed to Tenant monthly by the Landlord.

5. USE OF PREMISES: The premises shall be used for residential purposes only; and the premises shall be occupied only by two individuals one of which must be at least 55 years of age whose name(s) are listed below:

Dyce E. Bailey

Occupancy by other or additional persons is permitted only with the prior written consent of Landlord, who may grant or withhold such consent at Landlord's sole discretion.

6. ASSIGNMENT; SUBLETTING: This lease is assignable, providing that such assignment conforms with the limitations and language in Attachment "B". Subletting the manufactured home, the lot space, or any part thereof is not permitted.

7. PETS: No pets or animals of any kind shall be kept in or about the manufactured home park without the tenant first having signed the Pet Policy Rider.

8. WASTE; QUIET CONDUCT: Tenant shall not violate any County ordinance or State law in or about the premises, shall not commit or permit waste or nuisance in or about said premises, and shall not in any way annoy, molest, or interfere with other occupants of said premises or neighbors and shall not use in a wasteful, unreasonable, or hazardous manner any of the facilities, utilities, or services furnished by Landlord.

9. LANDLORD'S RIGHT OF ENTRY: Tenant shall permit Landlord and Landlord's servants, agents, and employees to enter into and upon the space rented to Tenant at all reasonable times for any reasonable purpose, including but not limited to the purpose of inspecting the premises, maintenance of utilities, protection of the manufactured home park and the purpose of posting notices of non-responsibility for alterations, additions, or repairs, without any rebate of rent and without any liability to Tenant for loss of quiet enjoyment.

10. LIABILITY: Tenant agrees that all of his personal property in the Park shall be at the risk of tenant. Tenant further agrees that Landlord shall not be liable for or on account of any loss or damage sustained by action of any third party, fire, theft, water, or the elements, or for loss of any property from any cause from said Manufactured Home Lot or any other part of the Park; nor shall Landlord be liable for any injury to Tenant, his family, guests, employees or any person entering the Park or the property of which the Park is a part, unless by negligence of Landlord, his agents, or representatives, in the operation or maintenance of the Park.

11. ATTORNEY'S FEES AND COSTS: In the event an attorney shall be employed or an action be commenced to enforce the provisions of this Lease Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and all costs and expenses in connection with any such proceedings.

12. ACCEPTANCE AND SURRENDER OF PREMISES: Tenant accepts the premises and all physical improvements in the common areas as is, and as being in good and sanitary condition and repair, and agrees at the termination of this Lease Agreement to peaceably surrender the premises to Landlord in a clean and satisfactory condition. Tenant has inspected the premises and the common areas (and all physical improvements therein) and accepts the same "as is", and acknowledges that the same are in good condition and repair, unless noted to the contrary in this Lease Agreement.

13. RULES AND REGULATIONS: Tenant acknowledges having read and received a copy of the Landlord-Tenant Act, Chapter 59.20 RCW and a copy of the current rules and regulations governing Tenant's conduct in the manufactured home park and on the space rented hereby; Tenant agrees to abide by and conform with each and all of the said rules and regulations, and all future rules, regulations, and notices duly adopted by Landlord hereafter. Tenant also agrees that any failure to comply with the rules and regulations by Tenant, Tenant's family, or Tenant's guests shall be a material breach of the terms of this tenancy, and Landlord may terminate Tenant's tenancy for such breach.

Note: Insofar as any provision of this Lease Agreement or the rules and regulations of the manufactured home park conflicts with any provision of RCW 59 applicable to manufactured home residency, the RCW 59 shall control.

14. HOLDING OVER: If Tenant, with Landlord's consent, remains in possession of the premises after expiration or termination of the term hereof, or after the date in any notice given by Landlord to Tenant terminating the tenancy, such possession by Tenant shall be deemed to be a month-to-month tenancy and shall be terminable as such by either party. All provisions of this Lease Agreement except those pertaining to term shall apply to such month-to-month tenancy.

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15. WAIVER: Any waiver by Landlord of, or Landlord's failure to take action in connection with, any provision of this Lease Agreement or the rules and regulations of the manufactured home park shall not be deemed a waiver of any such provision or any subsequent breach of any such provision, and the acceptance of rent thereafter shall not be deemed a waiver of any preceding breach by Tenant of any provisions of this Lease Agreement or said rules and regulations regardless of Landlord's knowledge of such preceding breach at the time of accepting such rent. In the event any provision of this Lease Agreement or the rules and regulations shall be determined to be invalid or unenforceable, the remainder of the Lease Agreement and the rules and regulations shall continue in full force and effect.

16. FORFEITURE: Upon default by Tenant with respect to any provision hereof, or abandonment of the premises by Tenant, Landlord may, in addition to any other rights or remedies Landlord may have, re-enter the premises through process of law and, at Landlord's option, declare a forfeiture and terminate this Lease Agreement. Upon termination of the tenancy, Landlord shall have a lien on all personal property of Tenant situated in and about the premises to secure payment of all rent, utilities and service charges, and damages owed by Tenant.

17. JOINT AND SEVERAL LIABILITY: Each person executing this Lease Agreement as "Tenant" is jointly and severally liable herein and is required to perform in full all obligations imposed on Tenant in this Lease Agreement.

18. REMOVAL SALE: If Tenant shall sell the manufactured home located upon the premises to a third party during the term hereof, and the manufactured home is to remain located in the manufactured home park after the sale, Tenant must first obtain Landlord's approval of the purchaser prior to completion of the sale; to enable Landlord properly to give or withhold such approval, Tenant shall give sixty (60) days' written notice to Landlord of the contemplated sale prior to the close of sale and shall otherwise cooperate in obtaining and providing to Landlord such information and documentation from the purchaser as is reasonably required by Landlord. Landlord reserves the right to require that the purchaser as a prospective tenant comply with any rule or regulation of the manufactured home park limiting residence within the park to adults only.

19. RESPONSIBILITY OF LANDLORD: It is the responsibility of the Landlord to provide and maintain physical improvements of the common facilities of the manufactured home park in good working order and condition. The following described physical improvements will be provided to Tenant: recreation building, green belt and common areas. Landlord reserves the right to construct or add to physical improvements at his sole discretion.

20. NOTICE OF CHANGES: Landlord shall, after having provided all tenants with at least ten (10) days prior written notice of the matters to be discussed, meet and consult with the tenants, either individually or collectively, on the following matters regarding general park operations:

a. Amendments to the park rules and regulations.
b. The standards for maintenance of physical improvements in the park.
c. The addition, alteration, or deletion of services, equipment, or physical improvements.

21. NOTICES: Any notice required by law or by the provisions of this Lease Agreement to be given by either party to the other may be served personally, or by any other form of service authorized by statute, or may be mailed by certified or registered mail, postage prepaid, addressed as follows:

To Tenant: Joyce E Bailey
2611 E Section # 93. Mt Vernon, WA. 98273

To Landlord: Little Mountain Estates
2610 E. Section Street
Mount Vernon, Washington 98273

or such other address as Landlord may designate by written notice to Tenant.

22. TERMINATION OF TENANCY: Grounds for the termination of the lease agreement shall be in accordance with the MOBILE HOME LANDLORD-TENANT ACT of the State of Washington Chapter 59.20.060.

23. EMINENT DOMAIN: In the event of taking of all or a portion of the park for any public use by right of eminent domain or by private sale in lieu thereof, so that the space rented to Tenant is not reasonably suited for the purposes for which rented or so that the park is not, in Landlord's opinion, suited for continued operation as a manufactured home park, this Lease Agreement shall terminate on the date that the possession of the park or portion thereof is taken. No award for any partial or entire taking shall be apportioned, and Tenant hereby assigns to Landlord and renounces any interest in or right to all or any portion or any award made or compensation paid to Landlord for the taking; provided, however, that Landlord shall have no interest in any award made to Tenant for the taking of personal property and fixtures belonging to Tenant, which Tenant would otherwise have been entitled to remove at the conclusion of the tenancy.

24. SUPPLEMENTAL DOCUMENTS: By this reference, Tenant's rental application and the following additional documents are incorporated herein by reference and made a part hereof as if set forth in full herein:

State of Washington Mobile Home Landlord-Tenant Act, Ch. 59.20
Park Rules and Regulations

Tenant acknowledges that a copy of each such document has been attached to this Lease Agreement and provided to Tenant.

25. ENTIRE AGREEMENT: Tenant agrees that this Lease Agreement contains the entire agreement between the parties relating to the rental of space within Landlord's manufactured home park. All prior negotiations or stipulations concerning this matter which preceded or accompanied the execution hereof, are conclusively deemed to have been superseded hereby. No servant, agent, or employee of Landlord has any authority to make any representations or enter into any agreements in any way inconsistent or in conflict with this Lease Agreement. This Lease Agreement may be altered, however, by written agreement of the parties or by operation of law.

26. CAPTIONS: The captions and paragraph headings in this Lease Agreement are for convenience only, are not to be considered a substantive part of the Lease Agreement, and are not intended in any way to limit or amplify any provision of this Lease Agreement.

LANDLORD:

By: _____
Authorized Signature

TENANT:
Joyce E Bailey

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LITTLE MOUNTAIN ESTATES

ATTACHMENT A

RENT ADJUSTMENT FORMULA

The Consumer Price Index All Urban Consumers - Seattle - Tacoma (1982-84 Base = 100) for the month nearest the first month of the lease is the base for computing the annual rent adjustment. If the index published nearest the annual adjustment date has changed over the BASE Index the new monthly rent shall be set by multiplying the first months rent by a fraction the numerator of which is the new Consumer Price Index divided by the BASE and the denominator is the BASE Index. This formula will be repeated for the second and subsequent adjustments to the rent level.

If the index is changed, revised or discontinued, a new formula will be devised using data from the United States Bureau of Labor Statistics or another appropriate government agency.

Additional adjustments may be made for:

- real estate taxes *
- water service *
- television cable *
- maintenance of common areas
- cost of operating the community building
- improvements made to the park

* (Note: Consistent with RCW 59.20.060(2)(c), these adjustments may be either positive or negative.)

Increases in these costs may be passed on at the annual rental adjustment date. If the landlord chooses to pass on the cost increases, the tenant will be presented with this information 3 months in advance, consistent with RCW 59.20.090(2). The costs will then be equally divided between the Little Mountain Estates Tenants, prorated to each lot at 1/120.

All rent figures will be rounded to the nearest dollar.

ATTACHMENT "B"

This lease shall be assignable by tenant only to a person to whom Tenant sells or transfers title to the manufactured home on said lot subject to the following:

a). All outstanding taxes, rents and/or fees owed by the tenant must be paid prior to such transfer.

b). Subject to the approval of Landlord after fifteen (15) days written notice by Tenant of such intended assignment. Landlord shall approve or disapprove of the assignment of this lease on the same basis that Landlord approves or disapproves of any new tenant or manufactured home.

c). Upon assignment by Tenant of Tenant's leasehold interest in the homesite, this rental agreement shall automatically convert to a one (1) year lease beginning on the effective date of the assignment. The new monthly rent shall be the rent charged by landlord following the most recent rent increase for the park preceeding the effective date of the assignment.

d). Assignment as defined in this paragraph shall apply to all voluntary transfers and involuntary transfers of Tenant, including a transfer between married tenants pursuant to a divorce decree, separation agreement, or similar document or order, or a transfer in a bankruptcy or other insolvency proceeding.

e). Landlord shall assign its interest in this agreement to any third party who purchases the park.

ATTACHMENT "C"

Name and address of all parties with a secured interest in the home:

APPENDIX D

36 Cal.App.4th 698
36 Cal.App.4th 698, 42 Cal.Rptr.2d 723, 95 Cal. Daily Op. Serv. 5354, 95 Daily Journal D.A.R. 9108
(Cite as: 36 Cal.App.4th 698, 42 Cal.Rptr.2d 723)

Court of Appeal, Second District, Division 4, California.
Louie VANCE et al., Plaintiffs and Appellants,
v.
VILLA PARK MOBILEHOME ESTATES et al., Defendants and Respondents.
No. B074103.

July 10, 1995.
Review Denied Oct. 5, 1995.

Mobile home owners brought action against mobile home park owners for declaratory relief, alleging that portions of leases violated mobile home residency law, and were unconscionable. The Superior Court, Los Angeles County, Anita Rae Shapiro, Temporary Judge, entered judgment for defendants, and plaintiffs appealed. The Court of Appeal, Charles S. Vogel, J., held that: (1) portion of lease that provided for annual increases in rent to account for costs associated with government services and improvements, property taxes, and insurance, did not impose fees on tenants in violation of mobile home residency law; (2) portion that provided for increase in rent upon transfer of lease, was not transfer fee in violation of mobile home residency law; and (3) lease was not unconscionable.

Affirmed.

West Headnotes

[1] Landlord and Tenant 233 ⇐383.1

233 Landlord and Tenant
233XII Mobile Homes and Mobile Home Parks
233k383 Rent and Other Charges
233k383.1 k. In General. Most Cited Cases
Portion of mobile home park lease that provided for annual increases in rent to account for "pass-throughs," which consisted of costs associated with government services and improvements, property taxes, and insurance, did not impose fees on tenants in violation of Mobilehome Residency Law, but rather constituted agreement that rent be increased to reflect increased expenses traditionally recoverable as component of rent. West's Ann.Cal.Civ.Code § 798.31.

[2] Landlord and Tenant 233 ⇐383.1

233 Landlord and Tenant
233XII Mobile Homes and Mobile Home Parks
233k383 Rent and Other Charges
233k383.1 k. In General. Most Cited Cases
Portion of mobile home park lease that provided for increase in rent upon transfer of lease, was not transfer fee in violation of Mobilehome Residency Law, but merely agreement as to when rent would increase; Mobilehome Residency Law did not prohibit negotiated escalating rental rate over term of agreement. West's Ann.Cal.Civ.Code § 798.72.

[3] Contracts 95 ⇐1

95 Contracts
95I Requisites and Validity
95I(A) Nature and Essentials in General
95k1 k. Nature and Grounds of Contractual Obligation. Most Cited Cases
Unconscionability of contract has procedural and substantive elements; procedural element of focuses on "oppression," which arises from inequality of bargaining power and absence of real negotiation or meaningful choice, and "surprise," which results from hiding disputed term in prolix document, and substantive element focuses on disputed term being overly harsh or one-sided. West's Ann.Cal.Civ.Code § 1670.5.

[4] Pleading 302 ⇐214(1)

302 Pleading
302V Demurrer or Exception
302k214 Admissions by Demurrer
302k214(1) k. In General. Most Cited Cases

Pleading 302 ⚿214(5)

302 Pleading
302V Demurrer or Exception
302k214 Admissions by Demurrer
302k214(5) k. Conclusions of Law and Construction of Written Instruments. Most Cited Cases
Ordinarily on demurrer, allegations of complaint must be accepted as true, but allegations expressing mere conclusions of law, or allegations contradicted by exhibits to complaint or by matters of which judicial notice may be taken need not be accepted as true.

[5] Contracts 95 ⚿1

95 Contracts
95I Requisites and Validity
95I(A) Nature and Essentials in General
95k1 k. Nature and Grounds of Contractual Obligation. Most Cited Cases
Unconscionability of contract is question of law for court.

[6] Landlord and Tenant 233 ⚿383.1

233 Landlord and Tenant
233XII Mobile Homes and Mobile Home Parks
233k383 Rent and Other Charges
233k383.1 k. In General. Most Cited Cases
Paragraph of mobile home park lease that provided for increases in rent at future intervals was not unconscionable; increases were plainly stated so as to prevent surprise, oppression was not factor due to other lease options under Mobilehome Residency Law, and increases, which were based on Consumer Price Index and actually-experienced increases in specified costs, were not overly harsh or one-sided, but rather bore reasonable relation to costs. West's Ann.Cal.Civ.Code §§ 798.17, 798.18.

[7] Contracts 95 ⚿1

95 Contracts
95I Requisites and Validity
95I(A) Nature and Essentials in General
95k1 k. Nature and Grounds of Contractual Obligation. Most Cited Cases
Without procedural element of unconscionability, mere allegation that price exceeds cost or fair value is not sufficient to establish substantive unconscionability.

[8] Contracts 95 ⚿1

95 Contracts
95I Requisites and Validity
95I(A) Nature and Essentials in General
95k1 k. Nature and Grounds of Contractual Obligation. Most Cited Cases
In determining whether contract is unconscionable, court will examine justification for price as of time of transaction.
****724 *701** Perona, Langer & Beck, Ronald Beck, and Ellen R. Serbin, Long Beach, for plaintiffs and appellants.

Swanson and Gieser, Jim P. Mahacek and C. Brent Swanson, Santa Ana, for defendants and respondents.

CHARLES S. VOGEL, Associate Justice.

Plaintiffs and appellants Louie Vance et al. are mobilehome owners renting spaces in a mobilehome park owned and operated by defendants and respondents Villa Park Mobilehome Estates et al. in the City of Long Beach. Appellants brought this action for declaratory relief and an accounting, alleging that certain provisions of their leases specifying formulas for future rent increases are in

reality prohibited "fees" under the *702 Mobilehome Residency Law (Civ.Code, § 798 et seq.) FN1 and are also unconscionable. The trial court entered judgment against appellants after sustaining demurrers without leave to amend to a portion of appellants' first amended complaint and to appellants' second amended complaint.

FN1. All statutory references are to the Civil Code unless otherwise indicated.

The parties agree there is no local rent control ordinance. Although the state Mobilehome Residency Law regulates in detail the relations between the owners of mobilehome parks and their residents, it is not a rent control law. (*Gregory v. City of San Juan Capistrano* (1983) 142 Cal.App.3d 72, 79-82, 85, 191 Cal.Rptr. 47.) Although the act prohibits certain fees (§§ 798.31, 798.72), it does not restrict the amount of rent which may be charged. Appellants' case is based on the argument that the rent provisions in their leases are in reality disguised fees of the type prohibited in sections 798.31 and 798.72. Interpretation of the written leases in light of the statute presents a question of law which we review independently of the trial court's conclusion. (*Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, 33 Cal.Rptr.2d 838; *Karrin v. Ocean-Aire Mobile Home Estates* (1991) 1 Cal.App.4th 1066, 1070, 2 Cal.Rptr.2d 581; *United States Elevator Corp. v. Pacific Investment Co.* (1994) 30 Cal.App.4th 122, 125, 35 Cal.Rptr.2d 382.) Finding no merit to appellants' contentions, we affirm.

THE LEASES

Some of the appellants signed the lease form shown by exhibit A to the complaint; others signed a lease form shown by exhibit B. They are essentially the same. At question are article 3 of the leases, which describes the beginning rent and the formula for rent increases, and article 8, which describes an additional rent increase upon sale or transfer of a mobilehome and assignment of the lease.

Rent

The leases are for five years. Paragraph 3.1 states the "beginning rent" and states that on each annual anniversary date "your **725 rent will increase" by the annual percentage increase in the Consumer Price Index and by the "pass-throughs" described in paragraph 3.2. (In form B there is an additional 10 percent increase in the 13th month.)

Pass-throughs

Form A states in paragraph 3.2, "PASS-THROUGHS: On June 1, 1988 and each subsequent Anniversary Date of this Lease, the then monthly rent shall *703 also increase by the pass-throughs noted below: [¶] A. GOVERNMENT SERVICES AND IMPROVEMENTS, PROPERTY TAXES AND INSURANCES: Increases or decreases in the cost of the governmental services and improvements, property taxes and insurance will also be used to increase or decrease the rent."

Form B states in paragraph 3.2, "PASS-THROUGHS: Effective June 1, 1990, and on each subsequent Pass-Through Anniversary Date, of this Lease, the then monthly rent shall also increase by the pass-throughs noted below. All pass-throughs are part of your rent and are only referred to as 'pass-throughs' as a convenient way of identifying and explaining how a portion of your rent increase will be calculated each year. [¶] A. GOVERNMENT SERVICES AND IMPROVEMENTS, PROPERTY TAXES, AND INSURANCE: Increases or decreases in the cost of governmental services and improvements, property taxes, and insurance will also be used to increase or decrease rent."

Both leases provide that if the cost of government

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services or improvements or insurance changed by less than the change in the Consumer Price Index, no amount would be added or subtracted for these pass-throughs, and that if property taxes changed by no more than 2 percent, no amount would be added or subtracted for that pass-through. Other paragraphs define government services and improvements, property taxes, and insurance and describe how the increased or decreased costs will be calculated.

Rent Increase upon Transfer

Article 8 of the leases requires that upon sale or transfer of a mobilehome, the transferee must accept an assignment of the lease. Paragraph 8.1 of both forms provides: "You may sell/transfer your mobilehome per your and our rights and obligations under this Lease and the law as it may be amended. You must, however, immediately notify us in writing of your intent to sell/transfer your mobilehome. You agree, however, that you will not sell or otherwise transfer your mobilehome to anyone who does not agree to accept an assignment of this Lease. (The assignment must be executed by the buyer/transferee, subject to our approval, prior to establishing tenancy and the 72-hour right of rescission provided for in *Civil Code* Section 798.17 will not apply to the buyer-transferee.) The requirements of this Lease and the paragraph 8 will apply even if you sell or transfer only a portion of your interest in your mobilehome."

Paragraph 8.3 of form A states, "Upon the sale/transfer of your mobilehome to someone other than your spouse, children or parents, the rent for your Space will be increased an additional 10% at the time of the sale/transfer and will remain subject to the CPI adjustments, pass-throughs and ***704** other terms of this Lease. This rent increase provision may only be applied a maximum of 2 times during the initial 60 month term of this Lease and 2 times during the extended term ... of this Lease."

Paragraph 8.2 of form B states, "Upon the sale/transfer of your mobilehome, the rent we are then charging will increase by an additional 10%. The rent increase (including pass-throughs) in paragraph 3.2 and elsewhere in this Agreement will also continue to apply to the rent the new resident pays." (However, the new tenant will get a new anniversary date, so that the new tenant has one year before suffering the pass-through rent increases.)

MOBILEHOME RESIDENCY LAW

Section 798.31 states, "A homeowner shall not be charged a fee for other than rent, utilities, and incidental reasonable charges for services actually rendered...."

****726** Other sections which follow contain specific prohibitions of fees for: services not listed in the rental agreement (§ 798.32), pets (§ 798.33), guests (§ 798.34), number of members in family (§ 798.35), rule enforcement (§ 798.36), entry, installation, hookup or landscaping (§ 798.37), and statutory penalties imposed on management (§ 798.42).

Section 798.72 provides, "(a) *The management shall not charge* a homeowner, an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, or the agent of any such person *a transfer or selling fee as a condition of a sale of his mobilehome* within a park *unless the management performs a service in the sale.* The management shall not perform any such service in connection with the sale unless so requested, in writing, by the homeowner, an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, or the agent of any such person. [¶] (b) *The management*

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shall not charge a prospective homeowner or his or her agent, upon purchase of a mobilehome, a fee as a condition of approval for residency in a park unless the management performs a specific service in the sale. The management shall not impose a fee, other than for a credit check in accordance with subdivision (b) of Section 798.74, for an interview of a prospective homeowner." (Emphasis added.)

***705** DISCUSSION

Pass-throughs

[1] Appellants alleged in the first cause of action of their first amended complaint that the pass-throughs are "not rent" within the meaning of section 798.31, and therefore cannot be charged at all, because section 798.31 prohibits any fee other than rent, utilities, and incidental reasonable charges for services actually rendered. We find no merit to this argument.[FN2]

FN2. The term "rent" is not specifically defined in the Mobilehome Residency Law. In the Mobilehome Parks Act, rent is defined as "money or other consideration given for the right of use, possession, and occupation of property." (Health & Saf. Code, § 18216.)

The Mobilehome Residency Law contains the following additional definitions: " 'Rental agreement' is an agreement between the management and the homeowner establishing the terms and conditions of a park tenancy. A lease is a rental agreement." (§ 798.8.) " 'Homeowner' is a person who has a tenancy in a mobilehome park under a rental agreement." (§ 798.9.) " 'Tenancy' is the right of a homeowner to the use of a site within a mobilehome park on which to locate, maintain, and occupy a mobilehome, site improvements, and accessory structures for human habitation, including the use of the services and facilities of the park." (§ 798.12.)

As explicitly described in form B's paragraph 3.2, "pass-through" here was used as a convenient label to describe increased operating costs. In the absence of rent control, the parties may agree on future rent increases based on increased operating expenses. In the leases, the pass-throughs operate as rent, not as fees.

In *Dills v. Redwoods Associates, Ltd., supra,* 28 Cal.App.4th 888, 33 Cal.Rptr.2d 838, the mobilehome lease provided that the base rent be adjusted for capital expenditures, as amortized. Like appellants, the tenants argued that the increased charge violated section 798.31. The court held that nothing in the Mobilehome Residency Law precluded the landlord from structuring rent in this manner. Reviewing the legislation in section 798.31 and its related sections, the court commented, "As this progression demonstrates, the focus of the Legislature was the prevention of a proliferation of service charges above and beyond rent or utilities. The unscrupulous park owner could lure mobilehome owners with a competitive rent, then 'nickle-and-dime' this relatively captive market with an array of unanticipated charges which when aggregated could render the tenant unable to afford to continue the tenancy. The Legislature first ensured that the charges must be for services actually rendered; it then required advance disclosure of the existence and amount of service charges in the rental agreement, proscribed ****727** particular fees it found odious, and required a 60-day notice period for any new charges for current tenants. Neither the original enactment nor its amendments signaled in any way a concern with limiting a mobilehome park owner's recovery of capital ***706** expenditures. Since capital expenditures have otherwise been a traditionally recoverable component of rent, even under rent control ordinances, there is nothing in

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the statute which precludes a park owner from structuring its rent in the manner of the defendants." (28 Cal.App.4th at p. 893, 33 Cal.Rptr.2d 838, fns. omitted.)

Here, as in *Dills,* nothing in the Mobilehome Residency Law prohibits the parties from agreeing that rent be increased to reflect increased expenses for the designated services, traditionally recoverable as a component of rent.[FN3]

> FN3. *Karrin v. Ocean-Aire Mobile Home Estates, supra,* 1 Cal.App.4th 1066, 2 Cal.Rptr.2d 581, cited by appellants, is distinguishable. There, a *rent control ordinance expressly provided* that assessments for capital improvements were *not* part of monthly rent. (*Id.* at pp. 1068-1069, 2 Cal.Rptr.2d 581.) Under the circumstances, the court was compelled to conclude the assessment was not rent within the meaning of section 798.31. (*Id.* at pp. 1071-1073, 2 Cal.Rptr.2d 581.) Here, unlike the ordinance in *Karrin,* the leases expressly treat the pass-throughs as rent. *Karrin* was distinguished and not followed in *Dills,* 28 Cal.App.4th at pp. 892 & fn. 3, 893, 33 Cal.Rptr.2d 838, and in *Robinson v. City of Yucaipa* (1994) 28 Cal.App.4th 1506, 1514, 34 Cal.Rptr.2d 291. In *Robinson,* involving a different rent control ordinance, the court concluded, "Reading the ordinance as a whole, it is clear that a capital improvement adjustment is a rent adjustment, not a fee," and not in conflict with section 798.31. (*Ibid.*)

Transfer

[2] In the first cause of action of their second amended complaint, appellants alleged that the increase in rent imposed upon transfer of a mobilehome in paragraphs 8.3 of form A and 8.2 of form B "is a transfer or selling fee within the confines of section 798.72 of the Civil Code and cannot be charged to plaintiffs or plaintiffs' prospective or actual successors-in-interest." [FN4] The legislative background of the predecessor statute to this section was discussed in *People v. Mel Mack Co.* (1975) 53 Cal.App.3d 621, 626, 126 Cal.Rptr. 505. Prior to statutory regulation, "it was the practice of some mobile home park owners to require prospective tenants desiring to move into a park to pay a fee to the park owner (an entrance fee); it was also customary in some parks to charge a fee when tenants sold their mobile homes and left them in the park (a transfer fee); the transfer fee had to be paid by the seller or the buyer." (*Ibid.*) The Legislature prohibited this practice. *Mel Mack Co.* specifically held that the prohibition extended to collecting a fee from the seller's broker, unless the park operator performed services in connection with the sale. (*Id.* at pp. 627-628, 126 Cal.Rptr. 505.) Currently, section 798.72 likewise prohibits park management from requiring a transfer or selling fee as a condition of sale (subd. (a)), or charging a fee as a condition of approval of the new tenant (subd. (b)), unless management performs a service in connection with the sale.

> FN4. Respondents suggest appellants have no "standing" because the rent is charged to the transferee. Appellants alleged standing by claiming that this provision made it difficult to sell their homes. This was sufficient to show appellants had "sufficient interest in the subject matter of the dispute to press their case with vigor." (See *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439, 261 Cal.Rptr. 574, 777 P.2d 610.)

*707 Appellants' contention that the rent increase upon transfer is a fee within the meaning of section 798.72 or *Mel Mack* lacks merit. Although not specifically defined in the Mobilehome Residency Law, "rent" has a settled legal meaning. (Fn. 2,

ante.) Rent is "the consideration paid by the tenant for the use, possession, and enjoyment of the demised premises. 'Rent' does not include other payments of money by a tenant for other purposes...." (6 Miller and Starr, Cal. Real Estate (2d ed. 1989) Landlord and Tenant, § 18:63, p. 141, fns. omitted.) A fee, under the Mobilehome Residency Law, is a specific charge imposed for incidental benefits and services, or impermissibly charged without giving incidental benefits or services or without advance disclosure in the rental agreement. Here, as with the pass-through rent increases, discussed *ante,* the increased rent is paid by the new tenant as monthly ****728** consideration for the use and occupation of the mobilehome lot.

The Mobilehome Residency Law clearly distinguishes between rent and fees. It regulates fees but not rent. A rental agreement must state "[t]he term of the tenancy and the *rent* therefor." (§ 798.15, subd. (a), emphasis added.) Also, it must separately describe the services to be provided during the term of the tenancy and the "*fees,* if any, to be charged for those services," and it must include a statement that management may impose "a reasonable *fee* for services" relating to maintenance if the homeowner fails to maintain the leased premises in accordance with the rules and regulations of the park. (§ 798.15, subds. (f) and (g), emphasis added.) Section 798.31 provides, "A homeowner shall not be charged a *fee* other than *rent,* utilities, and incidental reasonable charges for services actually rendered." (Emphasis added.) It is significant that the term "rent" is a separately referenced noun, underscoring the distinction between rent and any other economic incident of tenancy. When a statute distinguishes different words in the same connection, it is presumed the legislature intended different meanings and effect. (*Charles S. v. Board of Education* (1971) 20 Cal.App.3d 83, 95, 97 Cal.Rptr. 422; *Gonzales & Co. v. Department of Alcoholic Bev. Control* (1984) 151 Cal.App.3d 172, 178-179, 198 Cal.Rptr. 479.) Other sections that conditionally allow or prohibit fees for pets, guests, and the cost of management (§§ 798.33, 798.34, and 798.42) further illuminate the distinction between rent and fees within the context of the Mobilehome Residency Law. The fees prohibited or restricted under the act are for services and benefits ancillary to the homeowner's primary right of occupancy. The transfer and selling fees prohibited by section 798.72 are simply a charge imposed without any consideration and bear no relationship to the homeowner's right of use and possession. Nothing in the background of section 798.72 as described in *People v. Mel Mack Co., supra,* 53 Cal.App.3d at page 626, 126 Cal.Rptr. 505, indicates a legislative concern with the rent to be charged the new tenant for the use and ***708** occupation of the premises. (Cf. *Dills v. Redwoods Associates, Ltd., supra,* 28 Cal.App.4th at p. 893, 33 Cal.Rptr.2d 838 [nothing in background of prohibition of certain fees in §§ 798.31 to 798.36 indicated intent to regulate recovery of capital improvement expenses by increased rent].)

No provision of the Mobilehome Residency Law precludes a homeowner and a park operator from agreeing to a rental rate that escalates incrementally over the term of the lease. Section 798.16 provides, "[t]he rental agreement may include such other provisions permitted by law, but need not include specific language contained in state or local laws not a part of this chapter." In other words, what is not prohibited is permitted. The act contemplates by its terms that rent is controlled by contract and may be determined by any formula acceptable to the parties to the rental agreement. The fact that the increase in rent is triggered by the sale or transfer of the mobilehome does not change the result. If the parties may permissibly agree that the rent will increase upon certain dates, or in order to pass through certain increased operating costs, they may also permissibly agree that the rent will increase upon transfer and assignment of the lease. The homeowner may agree to conditions binding the successor-

in-interest over the remaining term of the assignable lease. Fixing the rate of increase in advance gives desirable certainty to both the homeowner and the park operator. This lease gives the homeowner another advantage: the ability to terminate the lease upon sale of the mobilehome so as to release the homeowner of all further obligations under the lease. The homeowner is free to weigh the consequences of the rental terms on the future saleability of the mobilehome and future value of the assignable lease.

In summary, the Mobilehome Residency Law clearly distinguishes between rent and fees, and no provision of the act prohibits a negotiated escalating rental rate over the term of the rental agreement. The fact that the increase is triggered by the sale of the mobilehome and assignment of the lease is of no consequence. Appellants were free to negotiate the rental rate for the term of the lease according to any formula acceptable to them and the respondents. Nothing restricted**729 their right to negotiate the rental rate for their successors-in-interest. As a matter of law, the increase in rent triggered by the transfer and sale of their mobilehome pursuant to the terms of the lease is not a transfer or selling fee within the meaning of section 798.72.

Unconscionability

In the second cause of action of their second amended complaint, appellants alleged, independently of the Mobilehome Residency Law, that the pass-through rent increases in paragraphs 3.1 and 3.2 of the leases are *709 "unconscionable, illegal and unenforceable, in that there was unequal bargaining power between plaintiffs and defendants when they negotiated the Leases, requiring plaintiffs to take it or leave it and defendants would not negotiate any of the terms. Further, said lease provisions seek to charge plaintiffs money for their tenancy, including 'pass-throughs,' that is unreasonably favorable to defendants in that said money is grossly disproportionate to the defendants' costs in operating the Park, and seek to charge plaintiffs for the Park's operating costs in maintaining the Park which defendants have the legal duty to pay for." [FN5] Appellants sought a judicial declaration that the rents charged pursuant to the leases are unconscionable and declaring what rents can be charged in the future.

FN5. The second cause of action also incorporated various allegations of the first cause of action concerning an extreme shortage of mobilehome park spaces, the high cost of actually moving a mobilehome, the difficulty of selling a mobilehome without providing a park space, the moderate income of many mobilehome owners, and a resulting disparity in bargaining power.

[3] Section 1670.5 (not part of the Mobilehome Residency Law) authorizes a court to refuse to enforce a contract or a clause of a contract which the court finds unconscionable at the time it was made.[FN6] Unconscionability has both a procedural and a substantive element. The procedural element focuses on two factors, (1) oppression, arising from inequality of bargaining power and the absence of real negotiation or a meaningful choice, and (2) surprise, resulting from hiding the disputed term in a prolix document. The substantive element focuses on the disputed term being overly harsh or one-sided, with no justification for it at the time of the agreement. (*A & M Produce Co. v. FMC Corp.* (1982) 135 Cal.App.3d 473, 486-487, 186 Cal.Rptr. 114; see also *Perdue v. Crocker National Bank* (1985) 38 Cal.3d 913, 925, & fn. 9, 216 Cal.Rptr. 345, 702 P.2d 503.)

FN6. Section 1670.5 provides: "(a) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the

> court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. [¶] (b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination."

[4][5] Ordinarily on demurrer the allegations of the complaint must be accepted as true. But this does not apply to allegations expressing mere conclusions of law, or allegations contradicted by the exhibits to the complaint or by matters of which judicial notice may be taken. (5 Witkin, Cal. Procedure (3d ed. 1985) Pleading, § 896, p. 337.) Unconscionability is a question of law for the court. (*Patterson v. ITT Consumer Financial Corp.* (1993) 14 Cal.App.4th 1659, 1663, 18 Cal.Rptr.2d 563.)

[6] ***710** There is no allegation of the surprise factor of the procedural element. The leases plainly state in the article on rent that rent will be increased in the future based on the Consumer Price Index and the pass-through expenses.

As to the oppression factor of the procedural element, we may take judicial notice, contrary to appellants' allegations of having no choice but to accept the terms, that appellants *did* have other options, under the Mobilehome Residency Law itself. Under sections 798.17 and 798.18, appellants had the right to reject the five-year lease with its future automatic increases and pass-throughs, and instead choose a twelve-month lease or a month-to-month tenancy. The ****730** leases contain express acknowledgements that appellants were offered these options.[FN7]

FN7. Paragraph 32 of form A provides:

> "ACKNOWLEDGEMENT: You acknowledge that you have read, understood and received a copy of this Lease, together with a copy of the Park's Rules and Regulations, Mobilehome Residency Law and other documents referred to earlier in this Lease. If you are an existing resident of the Park, you acknowledge that we have also offered you the option of: a month-to-month rental agreement, a rental agreement having a term of 12 months, or a rental agreement having a term which is longer than a month-to-month tenancy but less than 12 months. You also acknowledge your understanding that you may elect to accept anyone of these three (3) other options and that this election is solely at your option. You agree that you have, however, voluntarily agreed to accept this Lease."

Paragraph 32 of form B provides:

> "ACKNOWLEDGEMENT: You acknowledge that you have read, understood, and received a copy of this Lease, together with a copy of the Park's Rules and Regulations, Mobilehome Residency Law, and other documents referred to earlier in this Lease. You also acknowledge that we offered you the option to sign another Lease which has the automatic renewal/extension provisions and does not provide for the additional 10% rent increase effective on the first day of the 13th month, as is found in this Lease. You have, however, voluntarily rejected this other lease offer and, instead, elected to accept this Lease instead."

[7][8] Without the procedural element of unconscionability, the mere allegation that price exceeds cost or fair value is not sufficient to establish sub-

stantive unconscionability. (*Perdue v. Crocker National Bank, supra,* 38 Cal.3d at p. 926, 216 Cal.Rptr. 345.) The court will examine the justification for the price as of the time of the transaction. (*Id.* at pp. 926-927, 216 Cal.Rptr. 345; *Carboni v. Arrospide* (1991) 2 Cal.App.4th 76, 84, 2 Cal.Rptr.2d 845.) As we have discussed, the pass-throughs in the leases are labels for increased operating costs. In the absence of rent control, the parties may provide for future rent increases based on increased expenses of operation. Appellants' allegation that the pass-throughs are "grossly disproportionate" to respondents' costs is contradicted by the terms of the leases and the very nature of the pass-throughs. The increases are based upon a combination of (1) the Consumer Price Index, which is a reasonable means to measure the increased cost of goods and services generally, and (2) actually-experienced increased costs of the specified items: governmental charges and improvements, property tax and insurance. The rent increases bear a reasonable relation to costs. Appellants' ***711** allegation that the pass-throughs somehow unfairly shift to appellants the cost of operating the park "which defendants have the legal duty to pay for" is simply an erroneous conclusion of law. In the absence of rent control, it is untrue that the parties cannot provide for periodic increases in rent based on periodic increases in costs.

DISPOSITION

The judgment is affirmed.

EPSTEIN, Acting P.J., and HASTINGS, J., concur.
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